STUDENTS' EDITION

LAND TENURES
IN THE
MADRAS PRESIDENCY

BY

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ADVOCATE, HIGH COURT, MADRAS.

MADRAS

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ABBREVIATIONS AND REFERENCES

A.I.R.	...	All India Reporter
All.	...	Indian Law Reports, Allahabad Series.
Baden-Powell L. S. B. I.	...	Land Systems in British India, 3 Vols.
Vil. Com.	...	Village Communities.
Ben. L.R.	...	Bengal Law Reports.
Bom.	...	Indian Law Reports, Bombay Series.
,, H.C.R.	...	Bombay High Court Reports.
,, ,, A.C.J.	...	,, ,, Appellate Civil Jurisdiction.
,, ,, App.	...	,, ,, Appendix.
Cal.	...	Indian Law Reports, Calcutta Series.
C.W.N.	...	Calcutta Weekly Notes.
Dt. M.	...	District Manual issued for each district in the Presidency.
Fifth Report	...	Fifth Report from the Select Committee of the East India Company, 2 Vols. (Higginbotham's edition).
Glossary	...	A glossary of judicial and revenue terms by H. H. Wilson.
I.A.	...	Indian Appeals.
I.C.	...	Indian Cases.
L.W.	...	Law Weekly.
Laveleye	...	Primitive Property by Emile de-Laveleye (translated) 1878.
Lewinski	...	Origin of Property.
Mad.	...	Indian Law Reports, Madras Series.
M.H.C.R.	...	Madras High Court Reports.
M.I.A.	...	Moore's Indian Appeals.
M.L.J.	...	Madras Law Journal.
M.L.T.	...	Madras Law Times.
M.W.N.	...	Madras Weekly Notes.
Maine, Early History	...	Early History of Institutions by Sir Henry Maine (4th edition).
,, Vil. Com.	...	The Village Communities of the East and the West by Sir Henry Maine (5th edition).
Man. of Adminis.	...	Manual of the Administration of the Madras Presidency by Dr. Maclean, 3 volumes (1885).

Mandlik	... Translation of the Vyavahara Mayukha and Yajnavalkya by Rao Sahib V. A. Mandlik (1880).
Moore	... Malabar Law and Custom by Lewis Moore (3rd edition).
Pro. Sud. Court	... Proceedings of the Sudder Court.
Revenue Selections	... Selections of Indian Papers, Revenue and Judicial.
S B.E.	... Sacred Books of the East.
S.O.	... Standing Orders of the Board of Revenue.
Sel. Dec.	... Select Decrees of the Sudder Court.
Sud. Dec	... Decisions of the Sudder Court.
W.R.	... Weekly Reporter.
Wilson	... A glossary of judicial and revenue terms by H. H. Wilson.

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LAND TENURES
IN THE
MADRAS PRESIDENCY.

CHAPTER I.

INTRODUCTORY.

Meaning of tenure.

The application of the term, *tenure*, to Indian landholdings is not strictly accurate. It is essentially a feudal term applied to the system of holding land in subordination to another which in the feudal age constituted the leading characteristic of real property. Feudalism as was prevalent in Europe never obtained in India, and Indian institutions resembled more the benefices which preceded, than the fiefs which constituted, it. Nevertheless the term, *tenure*, has been retained in the absence of any other suitable one to denote comprehensively the rights and interests in and relating to land, and the relations with respect thereto between the persons entitled to those rights and privileges.

History of land.

The history of land throughout the world shows that it has pursued one unvarying course. It commences with the division of men into tribes, for the division of tribes involves division of territory. Each tribe jealously guarded its own territory from intrusion by others, but within its own range all members of the community had equal and unrestricted rights of user. This principle still survives among civilised nations to the present day. Each modern state claims a special ownership in the fisheries within a certain distance of its coasts; but among the inhabitants of these coasts there is a common right to fish in

the waters thus reserved. So also each modern state recognises the shores as far as high water mark and the estuaries with their harvests of wild fowl, as the common property of its subjects. In the earliest or hunting stage when primitive men lived by the chase, by fishing or gathering firewood, as is still pictured to us in the habits of North American Indians, they never thought of appropriating the soil and laying any claim to it, except regarding the hunting ground as common property which had to be guarded against competitors. In the next, nomadic or, pastoral, stage which is still prevalent among some of the hill tribes in India in what is known as the *kumri* cultivation, men moved with their flocks or herds from place to place as inclination or search of fresh pastures led them. Their agricultural labours were limited to the growing of a few cereals which the virgin soil produced with rich outturn, and the occupation of land seldom extended beyond the period necessary for one sowing and reaping. The idea of ownership went little further than the right to occupy and cultivate a particular spot as long as its possessor chose to do so. Abundance of land and scarcity of population made such a life easy and unrestrained. This temporary cultivation was the first species of property in land. As the tribe augmented in number, the nomadic life became less convenient, and with the discovery by the higher races of agriculture, the next stage of settled agriculture was reached. Men then became associated for mutual advantage and protection and settled down in fixed habitations called villages. The taste for property became visible on the formation of the family and its differentiation from the clan. Though holdings were allotted to each member, they were exchanged and re-distributed showing that no man regarded any field as his own property. The growth of population, however, necessitated more intensive cultivation, and the additional labour which it involved would make it inequitable to take away land from one who had spent labour upon it, and give it

to another who had been less active. Thus a stage will be reached in which community of possession will be limited to pasture lands, and arable lands will be held in permanence by the members of each family. When once this process is reached, a clear property in land originating in occupation and continued possession is created. This property was at first in the family, and the common property soon developed into individual property in obedience to the irresistible tendency of human progress, though it has not been developed to any great extent in India. Commencing, therefore, in community of tribal possession, land has everywhere been by degrees appropriated to the village, the family and the individual, and in every stage the condition of its enjoyment and use has been regulated by the community in reference to the general welfare.

Indian idea.

The communistic origin of property has been much doubted, but according to the Indian idea land was considered communal property.

Jaimini.

According to *Jaimini's* aphorism which in the opinion of European scholars was composed many years before Christ, "Earth cannot be given away as it is common to all."[1]

Savara-Sayana.

Savara and *Sayana* in commenting on this aphorism take the same view.

Among Kandhs.

Among the non-Aryan *Kandhs* land was considered common to all.

Among Todas.

Similarly also the claim of the non-Aryan *Todas* to all lands within the plateau of the *Nilagiris*.

Formation of tenures.

The formation of tenures is as much the result of geographical as of ethnological causes. Besides these two main causes, local conditions and the different political influences the country was subject to with varying force in different parts have contributed to infinite varieties of tenures. Of the purely vernacular institutions of this Presidency unaffected by the

1. VI. 7.2.

later, Hindu or Aryan, influence, there is no reliable evidence, except assumptions made on *a priori* reasoning. Starting, therefore, with Hindu institutions, they were first subject to Mahomedan influence. Where it was completely felt as in the Northern Sirkars, original institutions were completely obliterated and foreign ones introduced; where it was weak, institutions which were imperfect were left undeveloped, or changes introduced on the basis of existing ones; and where it was not felt at all as in the southern parts of the Presidency, institutions were left in their original state. The anarchy and internecine wars that followed the decline of the Moghul empire brought about new ideas of landholding. Lastly came the British influence with a regular and systematic revenue system and individual holdings.

Right of first occupant.

The Aryans being mainly an agricultural race, premium was given by them to agriculture, and the simple expedient that will suggest itself to a people in the early stages of development is to give possession of land to the first person who occupied and cultivated it. Thus it is stated in *Manu*, "Sages, who knew former times, consider this earth (*Prithivi*) as the wife of king Prithu; and thus they pronounce cultivated land to be the property of him, who cut away the wood, *or who cleared and tilled it*; and the antelope, of the hunter, who mortally wounded it"[1]; the words in italics being the gloss of *Kulluka Bhatta*. This verse of *Manu* evidently marks the stage when land was emerging from communal into individual ownership which was, however, in the family.

Among Kandhs.

A similar practice had also obtained among the non-Aryan *Kandhs*.

Mahomed.

The same view was also expressed by *Mahomed* in respect of waste lands. According to him, "Whoever cultivates waste lands does thereby acquire the property of them."[2]

1. Ch. IX. 44.
2. *Hamilton*, *Hedaya*, IV. Ch. 45, 129.

Similar ideas had also been expressed by Justinian and Blackstone. According to Justinian, "Wild beasts, birds, fish, *i.e.*, all animals which live either in the sea, the air or on the earth, as soon as they are taken by any one, immediately become by the law of nations the property of the captor; for natural reason gives to the first occupant that which had no previous owner."

Justinian-Blackstone.

The theory of the right of occupancy by virtue of natural law has been strongly criticised by *Sir Henry Maine.* According to him this theory presupposed that the man in a state of nature was actuated by the same motives which guided a man of to-day living in an advanced state of civilisation to respect another man's property, whereas, on the contrary, his right to possession depended on his power to keep it, and overlooked the important fact that it was the community or the family that was the unit of such a society, and the application of the principle of occupancy to land dated from the period when the *Jus Gentium* was becoming the Code of Nature and was the result of a generalisation effected by the jurisconsults of the golden age.

Criticism by Sir H. Maine.

Manu's dictum is not based upon any theory, but on the actual practice that had previously obtained as declared by the sages who went before him. His verse is used to illustrate the discussion on filiation that had been carried on in the previous verses by comparing the respective claims of the owner of the seed and the owner of the land in which it is sown; and as it is usual with all ancient writers to illustrate the obscure by the well-known, it follows that the ownership of land in the first occupant was a well understood idea in his time. Later writers deal with the different modes o

Manu's dictum.

Later writers.

acquiring property. The text of *Gautama* dealing with the different modes of acquiring ownership is well-known: "A (man becomes) owner by inheritance, purchase, partition, seizure or finding. Acceptance is for a Brahman an additional (mode of acquisition). Conquest for a Kshatriya. Gain (by labour) for a Vaisya or Sudra."[1] The fourth mode of acquisition of ownership corresponds to title by occupation under the Roman law. The *Mitakshara* gives objects of occupation such as water, grass, wood and the like;[2] the *Viramitrodaya* adds those "appertaining to the common forests,"[3] and the *Saraswati Vilasa* explains "seizure" to be "the appropriation of water, grass, firewood and other things found in a forest and other places which have not been appropriated by other persons."[4]

Gautama.

Mitakshara.

Viramitrodaya.

Saraswati Vilasa.

Judicial decisions in this Presidency have recognised the right of the first occupant to the possession of land under the Hindu law. In *Secretary of State* v. *Vira Rayan*,[5] *Sir Charles Turner C. J.* and *Muthusawmy Ayyar J.* observed, "According to what may be termed the Hindu common law, a right to the possession of land is acquired by the first person who makes a beneficial use of the soil." The interest of the person thus taking possession is not a limited but an absolute one.[6]

Judicial decisions.

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1. Ch. X. 39 (S. B. E. II. 228).
2. Ch. I. Sec. 1 pl. 13 (*Colebrooke*, 250).
3. Ch. I. Sec. 13 (*Sarkar*, 8).
4. *Foulkes*, Sec. 466, page 49. See also *Smriti Chandrika*, Ch. I. Sec. 27 (*Krishnaswami Ayyar*, 12).
5. 9 Mad. 175 (179).
6. *Gunga Gobind Mundul* v. *Collector of the Twenty-four Pergunnas*, 11 M.I.A. 345 (361).

Sovereign's right only to revenue.

Possession of land being thus acquired by the first occupant, what is the right of the sovereign in it? The ancient law-givers have laid down most distinctly that he is entitled to a share of the produce of the land taken, it is said, for protecting the life, liberty and property of the people under his charge. As early as the days of the *Rig Veda* we find it stated, "And then may Indra make the clan bring tribute unto thee alone."[1] *Manu* says that "A king may take of grain an eighth part, a sixth, or a twelfth, according to the difference of the soil, and the labours necessary to cultivate it"[2], and later on, that a military king may levy even a fourth part in times of urgent necessity, as of war or invasion[3]. *Yajnavalkya* says, "Protecting his subjects with justice, he receives one-sixth of their merit";—"If being unprotected the subjects commit any sin, the king shares half of it; for he receive taxes [from the subjects]"[4].

Rig Veda.

Manu.

Yajnavalkya.

Protection of revenue.

Manu.

In order to secure the revenue to the king penalties were imposed for non-cultivation of land. *Manu* says, "If (the crops are destroyed by) the husbandman's (own) fault, the fine shall amount to ten times as much as (the king's) share; but the fine (shall be) only half that amount if (the fault lay) with the servants and the farmer had no knowledge of it"[5]. Nowhere do we find in the writings of any of the ancient law-givers any provision empowering the king to sell land for default in the

1. *Rig Veda*, X. 173, 6.
2. *Manu*, Ch. VII, 130.
3. *Ibid.* Ch. X 118 (S. B E. XXV, 427).
4. Ch. I. V. 334, 336, 337 (*Mandlik's edition*, 198).
5. Ch. VIII v. 243 (S. B. E. XXXV, 297).

payment of revenue nor transfer it to another. Distraint and sale laws are quite foreign to ancient Hindu law

Payment, rent or tax.

We have next to see in what capacity the king is allowed to take a share of the produce. Does he take it as the proprietor of the soil, or merely as the price for the protection he is affording to the life, liberty and property of his subject? In other words, is the payment made by the subject rent or tax? The point of view taken involves most important consequences to the subject and is thus described by the late *Marquis of Salisbury*: "To the modern statesman, the refined distinctions of the economical school are a solid living reality, from which he can as little separate his thoughts as from his mother tongue. To us it may seem indifferent whether we call a payment *revenue* or *rent*, so we get the money; but it is not indifferent by what name we call it within *his* hearing. If we say that it is *rent*, he will hold the Government in strictness entitled to all that remains after wages and profits have been paid, and he will do what he can to hasten the advent of the day when the State shall no longer be kept by any weak compromises from the enjoyment of its undoubted rights. If we persuade him that it is *revenue*, he will note the vast disproportion of its incidence as compared to that of other taxes, and his efforts will tend to remedy the inequality and to lay upon other classes and interests a more equitable share of the public burden. I prefer the latter tendency to the former. So far as it is possible to change the Indian fiscal system, it is desirable that the cultivator should pay a smaller proportion of the whole national charge. It is not in itself a thrifty policy to draw the mass of revenue from the rural districts, where capital is scarce, sparing the towns where it is often redundant and runs to waste in luxury. The injury is exaggerated in the case of India, where so much of the revenue is exported without a direct equivalent. As India must be bled, the lancet should be directed to the parts where the blood is congested,

or at least sufficient, not to those which are already feeble from the want of it"[1].

Private property. Manu.

In the *Institutes of Manu*, there are passages which can only be explained on the footing of the existence of private property in the subject.[2]

Jaimini.

Another Hindu sage, *Jaimini*, clearly negatives the king's right to the proprietorship of the soil. "It belongs," says he, "to all alike: therefore, although a gift of a piece of ground to an individual does take place, the whole land cannot be given by a monarch, nor a province by a subordinate prince; but house and field acquired by purchase and similar means are liable to gift."

Nilakanta.

Nilakanta in the *Vyavahara Mayukha*[3] adopts the same view. He says, "The ownership in each village, field and the like of the whole earth, or the dependency belongs solely to the respective bhumikars or landlords. The ruler has only to take the taxes. Hence in what is now technically called a gift of land, etc., a gift of the soil is not accomplished, but only a grant of the allowance (is provided). But in purchases made from the bhumikars or owners of the soil, even ownership in houses and soil accrues."

Jagganatha.

The only Hindu authority that may be said to recognise in a way the state ownership of the soil is that of a comparatively modern writer, Pandit *Jagganatha Tercapanchanana* of Bengal. In his Digest prepared in 1773 at the direction of *Sir William Jones*, he is said to have stated views incompatible with the existence of private property in land. He cites no ancient texts in support of his views and cannot have been unaware of the text of *Manu*. The Digest reveals an attempt on his part to reconcile the views prevalent in his time in Bengal with

1. *Minute of Lord Salisbury, dated* 26th April, 1875; see also *Progress*, 105.
2. *Manu*, Ch. VIII, 239, 245, 262, 264; Ch. IX, 49, 52, 53, 54 (S. B. E. XXV, 296, 298, 300, 301, 336, 336, 336).
3. *Mandlik, Vya. May. and Yajna*, 34.

ancient texts, and it is impossible to describe exactly what his views really are.[1]

Mahomedan law.

The Mahomedan law is also the same. In conquered countries, India being one, the land is subject to either of two imposts, the *ooshr* or the *khiraj*. The land of the Mahomedan can be subject to either the *ooshr* or the *khiraj*, while that of the non-Mahomedan is subject only to the *khiraj*; and when the Imam conquers a country and imposes the *khiraj* the land becomes the property of the inhabitants who may sell or dispose of it in any manner they choose. "He who has got a tribute from the land has no property in the land: hence it is known that the king has no right to grant the land which pays tribute, but that he may grant the tribute arising from it"[2]. *Khiraj* was not formally levied in India, and the Mahomedan conquerors were content to take a share of the produce as revenue which the Hindu kings had been levying before, and did not interfere with the property in land vested in the inhabitants.

Suryanarayana *v.* Potanna.

The view above set forth that both under Hindu and Mahomedan laws land was not vested in the king and that the proprietor had an absolute ownership and dominion therein, subject to the payment of a share of the produce which was, however, liable to variation at the will of the sovereign was acted upon by *Lord Lyndhurst* [3], *Lord Romilly* [4], and by the High Courts.[5] It is confirmed by *Dr. Burnell* who says "A consideration of royal grants would also conclusively show (as the

1. According to *West J.*, *Jagganatha* far from denying subjects' property in the soil insisted upon it in the strongest way and merely expressed a proposition of the *rajniti* which has its counterpart in the writings of European authors, *Bhaskarappa* v. *Collector of North Canara*, 3 Bom. 452.

2. *Modena Sharhi Baaz* quoted in Wilk's History of Mysore, I. 118.

3. *Freeman* v. *Fairlie*, 1 M.I.A. 305 (343).

4. *Gunga Gobind Mundal* v. *Collector of Twenty-four Pergunahs*, 11 M.I.A. 345 (362).

5. *Lekkamani* v. *Puchaya Naiker*, 6 M.H.C.R. 208; *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*, 20 Mad. 299.

Sanskrit lawyers asserted) that the Government never had any right to the land "[1], and the recently published inscriptions of nearly thousand years old fully bear him out. But in the recent case of *Suryanarayana* v. *Potanna* [2] decided by the Privy Council there is a dictum to the effect that the mere fact that " Rulers in India generally collected their land revenue by taking a share of the produce of the land is not by itself evidence that the soil of lands in India was not owned by them and could not be granted by them ; indeed, that fact would support the contrary assumption that the soil was vested in the Rulers who drew their land revenue from the soil, generally in the shape of a share in the produce of the soil which was not a fixed and invariable share, but depended on the will of the rulers"; and their Lordships place reliance in support of their dictum on the wording of the preamble to Regulation XXXI of 1802. Their dictum is not warranted by either the Hindu or Mahomedan law, and the actual practice of Indian kings, Hindu and Mahomedan, was against it. Their Lordships cannot free their minds from the feudal notion of property law under which they have been trained and making the assumption which it involved that the soil was the king's, they deduce the natural corollary thereto that enjoyment of profits from land is evidence of ownership therein. This was the very assumption to correct which Regulation IV of 1822 had to be passed. The preamble to Regulation XXXI of 1802 which had been relied on has been the subject of consideration by the Privy Council in an earlier case, *Collector of Trichinopoly* v. *Lekkamani*,[3] in which it has been held that the wording of the preamble was not intended to declare the rights of government against ryots or landholders. But unfortunately this decision has not been brought to the notice of Their Lordships.

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1. Quoted in *Progress*, 9.
2. 41 Mad. 1012 : 45 I.A. 209
3. 1 I.A. 282.

Early English administrators.

On the conquest of India by the English, they proceeded upon the assumption that the soil belonged to the sovereign. Having been brought up amidst the feudal idea of property that the king is the owner of all land within the realm, and that the subject can only have an interest therein, early British administrators concluded that the same idea prevailed in India also. They were to a large extent influenced by the conditions prevalent at the time.

Early policy of government.

It was the policy of the government at the commencement of the last century to allow all lands to become private property. It was intimated in the Despatch of Lord Wellesley that it never could be desirable that the government itself should act as the proprietor of lands and collect the rents from the immediate cultivators of the soil.[1] When in 1808 the Board of Revenue suggested that an *augmentation* of revenue might be derived from waste lands reserved, they were informed that the government did not look to any advantage of that nature beyond increasing the public taxes in proportion to the existing taxes of the country.[2] Although a different policy has been pursued claiming proprietorship over waste lands in districts other than Malabar, the government does not appear at any time to have claimed proprietorship over cultivated lands.

Declaration of government.

In the year 1856 the Government of Madras in addressing the Court of Directors remarked that the share of the produce taken was only a tax and not rent, and its subsequent declaration contained in G. O. dated 21st September, 1882, No. 1008 clearly expresses its view that it has no proprietary right in the land.

1. Quoted in *Vyakunta Bapuji* v. *Government of Bombay*, 12 Bom. H. C. R. App. 1 (144).

2. *Secretary of State* v. *Vira Rayan*, 9 Mad. 175 (180) ; *Secretary of State* v. *Ashtamurthi*, 13 Mad. 89 (109).

At the time of permanent settlement.

Acting on the view that it was the proprietor of the soil, the government purported to confer the proprietary right therein on zemindars at the time of the permanent settlement in the year 1802. In the preamble to Regulation XXV of that year passed for the purpose of carrying out the permanent settlement, it is recited that "It has been usual for the Government to deprive the zemindars, and to appoint persons on its own behalf to the management of the zemindaries, thereby reserving to the ruling power the implied right and the actual exercise of the proprietary possession of all lands whatever," and Section 2 vests this proprietary right in the zemindars or other proprietors of land. Subsequently it was found that the Regulation had the effect of interfering with the established rights of ryots, and Regulation IV of 1822 was passed which declared that the provisions of Regulations XXV and XXXI of 1802 were not intended to interfere with the actual rights of the ryots. Relying on Regulations XXV and XXXI of 1802, the government put forward the claim that there was no proprietary right in lands not permanently assessed, but the Privy Council overruled it and held that the Regulations had not the effect of interfering with private property, nor of vesting it in government.[1]

Relation between government and ryot.

What is the relation between the government and the ryot? From what has been said before, the latter came into existence not under any letting by the sovereign of the day, but independently of him,[2] and perhaps he had not come into existence then. There is, therefore, no analogy between the Indian ryot and the English tenant, since the latter claims through a landlord, and the relation of landlord and tenant does not exist between the government and the ryot On the other hand the latter is the landlord, or at any

1. *Collector of Trichinopoly v. Lekkamani*, 1 I.A. 282.
2. *Venkatanarasimha Naidu v. Dandamudi Kotayya*, 20 Mad. 299.

rate, combines in his own person the characters of labourer, farmer, and landlord. He divides with government all the produce of the land, and whatever is not taken by it, belongs to him. He is not a tenant at will or for a term of years, and is not removeable because another offers more.

Indian common law.

The common law of India recognises two rights in land, *viz.*, (1) that of the sovereign or his assignee; and (2) that of the ryot holding individually, or as a member of a joint family, or village community. The sovereign has a right to demand revenue in the shape of a share of the produce from all cultivated lands which is liable to variation at his will and which is known as *rajabhogam*,[1] *melwaram*,[2] *melpadi*,[3] *metikoru or metipalu*, which has now heen commuted in *ryotwari* tracts to a money payment; and the share of the cultivator is known as *kudi-waram*,[4] *kilpadi*,[5] *koru or medepalu*. All other interests in land are derived from the one or the other. Subject to the payment of his share, the sovereign has no right to the possession of lands. While he dealt with his interest in land, the ryot dealt with his.

Theory of partnership.

Out of the division of the produce between the sovereign and the subject has been developed the theory of partnership between the two. Partnership is essentially a creature of contract and in the very constitution of relationship between the two, there is hardly any room for presuming any. It does not appear that the proprietor of land ever took the permission of the sovereign for cultivation, though, when he did so, he became liable to pay the sovereign a share of the produce. In early times when money was unknown or scarce, the share of

1. *lit*, the share of the raja or government.
2. *lit*, superior waram or share.
3. *lit*, superior half.
4. *lit*, cultivator's share.
5. *lit*, lower half.

the produce due to the sovereign was rendered in kind, and while in other countries it has been commuted to a money payment a long while ago, the division of the produce still prevails in a large part of the Presidency, excepting *ryotwari* tracts. This led the elder *Mr. Mill*, the Board of Revenue, Sir Charles Turner, a former Chief Justice of Madras[1] and others as well to think that the sovereign and the subject were joint owners of the land. In putting forward this theory of partnership Sir Charles Turner specifically mentions the *moozaraut* as its basis. *Moozaraut* is only one form of letting in Mahomedan days and is based on partnership. Thus one form of letting under the Mahomedan law, the *moozaraut*, based on a contract of partnership, has been made to denote one general form of tenure as being prevalent not only in Mahomedan but Hindu days as well. The introduction of this theory has served two-fold objects: On the one hand it has given the government a right to demand an increase of revenue when there has been an increase of prices, though at fixed intervals; and on the other it has led to the amelioration of the condition of ryots in zemindaries.

Right to waste.

We have dealt so far with the proprietary right of the sovereign to cultivated lands. We shall now deal with his right over waste or unappropriated land. His proprietary right thereto is a much debated question. One school affirms that waste land belongs to the state, while the other school maintains that it belongs to the subject individually or as a member of the joint family or village community. The one uncontroverted fact we start with is that waste lands are included within the boundaries of one village or the other.

Hindu law.

Manu vests the ownership of land in the first person who cut away the wood or who cleared and tilled it, thus placing it in the same category as wild beasts. It does not appear that at this early date any Hindu sovereign asserted any proprietary

1. *Venkatachallam Chetty* v. *Andiappan Ambalam*, 2 Mad. 232.

right to waste. In Tanjore whenever the king wanted to bestow waste land or any extent of land within the limits of a village, he purchased it from the mirasidars. A similar practice is spoken to by the Inam Commissioner, and the inscriptions of nearly thousand years old support his remarks.

Mahomedan law.

With the advent of the Mahomedans, however, a distinct change was brought about. The Mahomedan law administered in India is that enunciated by Abu Haneefa and the Hanafite doctrine laid down in the Hedaya vests the proprietorship in the *Imam*.

Early policy of the British.

The early policy of the British administrators was to allow all lands to become private property. It was intimated in the Despatch of Lord Wellesley that it never could be desirable that the government should act as the proprietor of lands and should collect the rents from the immediate cultivators of the soil.[1] Finally in their Despatch relating to the settlement of Malabar the Court of Directors observed that in Malabar they had no private property to confer with the exception of some forfeited estates.[2] Consequently the presumption in Malabar is that all land belongs to some individual or other, and that government has no claim to it except by way of escheat or abandonment.[3]

Subsequent change of policy.

Subsequently the policy of the government underwent a material change under the strong influence of Sir Thomas Munro who maintained that waste land belonged to the state and did not at any time belong to the individual. The Despatch of the Court of Directors already referred to has been held applicable to the peculiar conditions of Malabar and not to the other

1. Quoted in *Vyukunta Bapuji* v. *Government of Bombay*, 12 Bom. H. C. R. App. 1 (144).

2. 1 *Revenue Selections*, 591.

3. *Secretary of State* v. *Vira Rayan*, 9 Mad. 175.

parts of the Presidency. Consequently it has been held that in other districts than Malabar the presumption to start with is that waste lands which are not the property of individuals or village communities belong to the state.[1] The same presumption applies to forest and waste lands in South Kanara.[2] But this presumption ceases to apply when the waste claimed, such as a barren rock, is within the temple enclosure.[3] There was a difference of opinion whether it was applicable to what are known as *mirasi* villages, and the decision of a Full Bench has brought it into line with the presumption in other districts.[4]

Presumptions regarding waste.

The Indian conception of property consists in the exclusive use and absolute disposal of the powers of the soil in perpetuity; together with the right to alter or destroy the soil itself, where such an operation is possible. These privileges, combined, form the abstract idea of property; which does not represent any substance distinct from these elements. Where *they* are found united, *there* is property and nowhere else.[5] This definition was accepted by the late *Sir Charles Turner*, a former Chief Justice of Madras.[6] But *Mr. Baden-Powell* remarks on this definition that "this is really the Roman ideal—the *usus, usufructus, abusus et vindicatio*—rather than an Eastern formula and it may certainly be denied that any such abstract ideas ever prevailed in India", and adds "but at the same time, we must be

The Indian conception of property.

1. *Subbaraya* v. *Krishnappa*, 12 Mad. 422; *Madura Tiruppurankundram etc. Devasthanams* v. *Ali Khan Saheb*, 61 M.L.J. 285 (P. C.).
2. *Ambu Nayar* v. *Secretary of State*, 47 Mad. 572: 51 I.A. 251.
3. *Madura Tiruppurankundram etc. Devasthanams* v. *Ali Khan Saheb*, 61 M.L J 285 (P.C.).
4. *Seshachallam Chetty* v. *Chinnaswami Asari*, 40 Mad. 410; *Kumarappa Reddy* v. *Manavala Goundan*, 41 Mad. 374; *Rengachari* v. *Secretary of State*, 60 M.L.J. 137.
5. *Elphnistone, History of India*, 79.
6. *Minute*, 17.

prepared to find particular claims to land expressed with great force."[1] This criticism is not accurate.

Early Hindu writers.

The Hindu sages who lived and thought at a time when Rome was in its infancy never speculated on any theory, but always took a practical view of things. Their writings give the incidents of property which at a later day were declared by jurists to constitute property or ownership in the abstract. Notions about proprietary rights can hardly find a place amongst people in the earlier stages of civilisation which are due to juridical refinements of later ages. The use of property was not confined solely to the Aryans, and the *Mitakshara* in discussing proprietary rights says, "Besides, the use of property is seen also among inhabitants of barbarous countries, who are unacquainted with the practice directed in the sacred code: for purchase, sale, and similar transactions are remarked among them"[2].

Later writers.

Later writers have dealt with the abstract idea of property. The term property is used by them with reference to the thing and ownership with reference to the person. *Jimuta Vahana* in the *Daya Bhaga* declares ownership to imply "the quality (in the subject owned) of being used (by the owner) according to his pleasure and arises out of law[3]"; *Mitra Misra* in the *Viramitrodaya* says that "the distinctive feature of property is the capability of being dealt with according to pleasure; that which is capable of being used according to one's own

Daya Bhaga.

Viramitrodaya.

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1. L. S. B. I. I. 220; see also *Markby, Elements of Law*, 50; cf. *Mr. Logan's* view, "The European looks to the soil and nothing but the soil. The Malayali, on the contrary, chiefly looks to the people located on the soil." *Malabar*, Dt. M. 608.

2. Ch. I. Sec I. pl. 9. (*Colebrooke* 247). By the inhabitants of barbarous countries, *Vijnaneswara* evidently means persons who have not been brought under Aryan influence.

3. *Mandlik, Vya. May. and Yajna*, 31 Note (1).

pleasure is his own property"[1], and later on, "property is certainly a substance of distinct category of its own, which is liable to production and destruction, and is manifested by the cognizance of its means"[2]. Similar ideas are also expressed in the *Smriti Chandrika* [3] and the *Saraswati Vilasa*.[4] They recognise at the same time that the exercise of the rights of ownership is subject to the limitations imposed by law.

Smriti Chandrika.
Saraswati Vilasa.

The conception of property according to the Mahomedan law is that the owner of land is entitled to use it and enjoy it in the manner that suits him best even if it causes inconvenience or injury to his neighbours, provided he does not destroy the neighbour's property or make it useless to him.[5]

The Mahomedan conception.

In his *Minute* on *Malabar Land Tenures*,[6] *Sir Charles Turner* remarked that "the Hindu Law not only recognised the sale of land, the gift of land, and the inheritance of land all in complete ownership; subject, except where held by Brahmans, to the payment of the king's due; but it also recognised a multiplicity of forms of mortgage, some extending to the usufruct of the land, others to the actual ownership", and after discussing the various forms of conveyances prevalent in Malabar, he observed that "they point to an ownership of the soil as complete as was enjoyed by a freeholder in England."

Recognition of transfers.

1. 10 (*Sarkar's translation*); *Mandlik, Vya. May. and Yajna*, 31 Note (1).
2 *Ibid*, 24.
3. Ch. 1. pl. 25, p. 10 (*Krishnaswamy Iyer's translation*).
4. S. 404, p. 82 (*Foulkes' translation*).
5. *Abdur Rahim, Mahomedan Jurisprudence*, 270.
6. 17.

In the Tamil districts the right to property is generally known as *kaniatchi*, *kani*, or as *adhinam*, and when held by a Brahman, as *swastyam*, and its holder is known as *kaniatchikarar*, *kanikarar*, *karaikarar*, *adhinakarar* or *adhinakarthar*, or *swastiyamdar*. *Kaniatchi* is derived from *kani*, meaning property, and *atchi*, dominion or power, and the compound means free and hereditary property. The etymological meaning of the term excludes the idea of mere usufructuary occupation of the soil. In Tanjore during the time of the Maharatta government the hereditary right to land was known as *kunbava*, and in the old province of Dindigul, its holder was known as *pattookut* ryot. After the Mahomedan conquest the hereditary right became known as *miras* or *mirasi* and its holder as *mirasidar*. The term *mirasidar* is generally falling into disuse, and after the introduction of the ryotwari system, is being replaced by the term *pattadar*.

In Tamil districts.

The *mirasidars*' power of disposition over cultivated lands was absolute. But they were bound to cultivate to the best of their ability according to the water that could be commanded and the means they possessed.

Power of disposition.

In South Kanara the proprietors of land are known as *wargadars*, *mulawargadars*, *mulgars* or *mulis*, and their estates went by the name of *wargs*. The term *warg* is derived from the Sanskrit *varga*, a leaf having been originally used for the leaf accounts kept by the revenue authorities; and in course of time the term came to denote the holding for which the account was kept. A *warg* is often composed of unconnected parts situated in different villages, and sometimes even in different districts, and therefore the word estate which conveys the idea of compact property cannot be applied to a *warg*. It comprises not only cultivated, but waste, lands also. The *warg* was the unit of

In South Kanara.

assessment in South Kanara, and the assessment was a lump sum for the whole *warg*.

Muli and geni wargs.

The *wargs* are of two kinds : (1) *muli wargs* and (2) *geni* or *sirkar geni wargs*. *Muli wargs* are those held by *wargadars* in their own right, and *geni* or *sirkar geni wargs* are those which have escheated to government by lapse of heirs or by abandonment by proprietors. The legal position of a *mulawargadar* and of a *geni* or *sirkar geni wargadar* is the same.

Walawarg.

Sometimes it happens that, after the *wargadar* has sold away a portion of a *warg*, the *varga* or leaf for the entire *warg* continues to stand in his name, and the purchaser instead of paying the assessment due on the portion purchased by him direct to government pays it to the *wargadar* who pays to the government the revenue due on the entire *warg*. The portion so sold is known as *walawarg* which means an *underwarg*, and its holder as *walawargadar*. He is liable to the *wargadar* for the assessment due on the portion purchased by him, and the *wargadar* is sometimes paid a consideration known as *moggu* for his trouble in collecting the assessment and paying it to government.

Kudutale.

Very frequently on the sale of a portion of a *warg* an amount settled by the parties is fixed in the deed of sale as the proportionate assessment due on the portion sold, and the portion of the *warg* so sold is known as *kudutale*, and its owner as *kudutaledar* who pays the assessment direct to government. But the apportionment of the assessment made by the parties is not binding upon government, unless the *warg* is divided and sub-division made ; and until this is done, the lands of the *kudutaledar* are liable to be proceeded against for any default in the payment of the revenue due on another portion of the *warg*. When a *warg* is divided, the portion divided is entered as a

new *warg* being entered as *muli* or *geni* according to the designation of the original *warg*. After the introduction of the ryotwari system into South Kanara, no distinction now exists between the *wargadar*, *walawargadar*, and *kudutaledar*, and they are all ryotwari proprietors.

Kadim and hosagame wargs.

Wargs are also classified into *kadim* and *hosagame wargs*. *Kadim wargs* are those existing before the commencement of the company's rule; and *hosagame wargs* are those formed after that date by the cultivation of immemorial waste. The tenure of a *hosagame wargadar* is the same as that of a *mulawargadar*, except that the privilege and easements over jungle and pasture lands, called *kumaki* rights, have not been conceded to *hosagame wargs* created since fasli 1276.

Bharti Kambharti.

Wargs are also divided into (1) *bharti*, those that are able to pay the full *tharao* assessment; (2) *kambharti*, those that are unable to pay that assessment. The latter are further sub-divided into (*a*) *vaida*, holdings that require progressive assessment, that is, that pay by increased rates till they become *bharti*; (*b*) *board sipharas*, those favoured by the Board of Revenue, being estates disadvantageously situated which could not be expected to pay in full, and (*c*) *taniki*, those which are uncertain and settled annually.

Vaida, board sipharas, and taniki.

Kumaki lands.

Wargs created before fasli 1276 have attached to them *kumaki* lands, that is, lands allowed to assist in the cultivation and intended to afford to the ryots the means of procuring leaves from the brushwood or jungles growing on them as manures for their fields and to furnish grass as fodder for their cattle. On account of the configuration of the country cultivation is carried on on the level slopes of valleys, and the *kumaki* claim was extended up to the watershed or crest of hills, and was

known as *nettikat* claim. Since the year 1848 the *kumaki* claim extends only to 100 yards of the forests adjacent to the *warg* lands all round the *warg*. The *wargadar* has no proprietary right in those lands.[1] His rights therein are merely in the nature of a license and are therefore liable to be extinguished by government conveying the lands to another.[2]

Kumri lands

Kumari or *kumri* cultivation is cultivation of land outside a *warg* by felling and burning a patch of forest and raising on the ground manured with the ashes a crop of rice or dry grain mixed with cotton, castor oil seed etc., and these patches are called *kumari* or *kumri* and the lands so desultorily cultivated as *kumari* or *kumri* lands. The government for the purpose of clearing the undergrowth in the forest has been allowing the forest tribes who sparsely inhabited the forests to make clearances and grow such cereals as they were capable of. These primitive tribes cultivated certain spots, reaped the crops, and then moved off to some other patches of land, and these patches are known as *sirkar kumries* and the assessment thereon was paid to government direct. The government also allowed some of the neighbouring *wargadars* to take the leaf manures from the forests and clear the undergrowth for the desultory cultivation. They are designated *wargadar kumries*. In this case the assessment was collected along with the other assessment on the *warg* and the *kumri* cultivators dealt only with the *wargadar*. *Kumri* cultivation gives no proprietary right in the forest in which it is carried on, nor even over the spots which had been actually cultivated.[3] The position of the cultivator is that of a mere licensee who cannot claim title by possession, however

Sirkar kumri.

Wargadar kumri.

Kumri rights.

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1. *Secretary of State* v. *Krishnayya*, 28 Mad. 257.
2. *Ibid.*
3. *Ambu Nayar* v. *Secretary of State*, 47 Mad. 572: 51 I.A. 257.

long, unless it is proved that the possession was adverse to that of the government to its knowledge and with its acquiescence. There is no analogy between the nature of these *kumries* and *ryotwari* holdings.[1]

Right of disposition.

The *mulawargadars* had been from ancient times alienating their lands by gift, sale and mortgage.

In Malabar.

In Malabar the exclusive right to, and hereditary possession of, the soil is denoted by the term *jenm* which means birthright, and the holder thereof is known as *jenmi*, *jenmakaran* or *mutatalan*. These *jenmies* have been from time immemorial exercising the right of selling, mortgaging or otherwise dealing with the property.

Right of cultivation.

The owner of this proprietary right being himself the owner of the soil has got the right of cultivation of his lands in any manner he chooses, and any right claimed in derogation of it, is a special one which must be established by the person setting it up.[2]

Four modes of cultivation.

There are four principal modes by which the proprietor carries on the cultivation of his lands :—

Direct cultivation.

(1) One mode is by which he carries it on himself. The manual labour is supplied by himself, the members of his family and his relations.

With the aid of farm servants.

(2) The second mode is that with the help of farm servants who are permanent, temporary or occasional known as *pannials*, *pannaikarans* and *padials* in the Tamil Districts.

1. *Ambu Nayar* v. *Secretary of State*, 47 Mad. 572 : 51 I.A. 257.

2. *Seturatnam Ayyar* v. *Venkatachala Goundan*, 43 Mad. 567 : 47 I.A. 76 ; *Sivaprakasa Pandara Sannadhi* v. *Veerama Reddi*, 45 Mad. 586 : 59 I.A. 286 ; *Naina Pillai Marakayar* v. *Ramanathan Chettiar*, 47 Mad. 337 : 51 I.A. 83 ; *Subramania Chettiar* v. *Subramania Mudaliar*, 52 Mad. 549 : 56 I.A. 248.

The mode and amount of their remuneration vary with each village and district. In some localities they live in their master's house and are fed and clothed at his expense and paid at the end of the year as much as their feeding and clothing will cost. Generally *pannials* and *pannaikarans* are paid daily wages in grain or in money, and *padials* receive wages similarly by the month. In Tanjore and some other places they are also entitled to glean the grain split on the threshing floor and further receive aid in the shape of small presents in grain, in money, etc. on occasions of wedding, childbirth etc. and the Pongal festival. They are also allowed sites for their houses and backyards which they have to vacate the moment they cease to cultivate the lands. They are bound to give the whole of their time to their master and to devote their labour not only to agricultural, but also to domestic, work. They are liable to removal at any time at the pleasure of their master who does not generally do so if their work is satisfactory, except in the case of casual labourers who have been engaged for the time being or for the cultivation season alone.

With the aid of temporary tenants.

(3) The third mode is that with the help of temporary tenants. The proprietor arranges with them who undertake the cultivation of his lands on payment of a share of the produce. The exact share paid by them is fixed by agreement, and in its absence is generally determined by custom which varies with each village, and depends upon the nature of the soil, the gross outturn and the demand for labour, and is also regulated according as each party supplies seed and cattle. Generally temporary tenants supply the seed, cattle, implements of husbandry and labour. They also employ *pannaials*, *pannaikarans* and *padials* to work under them. In the *waram* system of cultivation, the share taken by the tenant does not include *kudimaramat*, manuring or the remuneration of village servants, all of which are to be provided by the

proprietor out of his share. In some cases the rate of *kudi-waram* is calculated upon the outturn less a certain percentage for village charges; and in such cases $3\frac{1}{6}$ per cent. is allowed to the tenant in addition to his waram as *kalavadi* or the privilege of gleaning the grain split on the threshing floor. The temporary tenants are sometimes provided with sites for building purposes.

Parakudi.

The general term used to denote a cultivator who is not a proprietor is *payakarry* or *parakudi* or *purakudi*. There are two classes of such cultivators, temporary and permanent. A temporary cultivator is also known *parakudi payakarry*, *parapayir-kudi*, *asal grama purakudi* or *anayakudi*. He is, as his name imports, generally the resident of another village who cultivates the lands of another for one or more years and mostly for a stipulated term and a given share of the crop. His rights are never hereditary, nor transferable by sale or otherwise, and unless special agreements are entered into, cease with the year. They are mere tenants at will. In Dindigul and Coimbatore resident ryots having no hereditary or proprietary rights in the lands they cultivate are known as *vellaversey* ryots, and non-resident ryots as *yerwaddis*. The Courts have uniformly held that *prima facie* the word *parakudi* implies a cultivator having no permanent right in the land he cultivates;[1] so also the word *asal grama parakudi*. A refusal by a *parakudi* to perform *parakudi* services renders him liable to be ejected without notice. *Ulavadai* does not denote a permanent right; nor the words *ulavadai mirasidar*.[2] But the words *ulavadai kani* denote a permanent right.[3]

Vellaversey ryots.

Yerwaddis.

The right of parakudi.

1. *Mayandi Chettiar* v. *Chockalingam Pillai*, 27 Mad. 291 : 31 I.A. 83; *Nkina Pillai Marakayer* v. *Ramanathan Chettiar*, 47 Mad. 337 : 51 I.A. 83.

2. *Mayandi Chettiar* v. *Chockalingam Pillai*, 27 Mad. 291 : 31 I.A. 83.

3. *Ibid.*

(4) The fourth mode of cultivation is that with the help of permanent tenants who are known as *resident payakarries*, *ulkudi payakarries*, *ullur purakudis*, *ul-purakudis*, *purakudi-ulo*, or *ulkudis*. *Ulkudi* (lit, within cultivator) means a resident cultivator or one who has got a residence in the village, as distinguished from the *purakudi*, a stranger cultivator who is not entitled to any such residence. Their existence is due to various causes:—(1) In some cases they are the residents of another village who have been induced to settle in the village by the concession of permanent right and grant of house sites; (2) in some cases they are the residents of the village to whom a similar right had been given as an inducement to break up and cultivate the hitherto uncultivated lands; (3) in some cases such right had been purchased from the mirasidars by tenants; (4) temporary tenants became by the custom of the country *ulkudis* by having cultivated the lands until the fourth generation or until the lapse of a century; and (5) in some locaties they are the descendants of old proprietors who have been reduced to that position by over assessment. In the Chingleput District *ulkudis* have a sort of life interest in the lands they cultivate and cannot be dispossessed as long as they pay the accustomed rent. But they have no power of alienation over the lands. Their heirs succeed to them, and in default of heirs, or on abandonment of lands by them, the lands revert to the proprietor. They do not participate in the fees and privileges of the mirasidars whose ascendancy they have to acknowledge by the payment of fees, albeit no more than a peppercorn. The *ulkudis* are entitled to compensation for loss of their interest when their lands are taken up under the Land Acquisition Act.[1] In Tanjore the *ulkudis* have a hereditary and inalienable right in the lands they cultivate. The *ulkudi* is not an occupancy tenant as he has not got the power of alienation. He divides,

With the aid of permanent tenants.

Ulkudi.

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1. *Appasami Mudali* v. *Rangappa Nattan*, 4 Mad. 367.

with the government the total produce of the lands he cultivates in cases where the government share is taken by division of the produce or pays the assessment when it has been commuted to a money payment, pays *swamibhogam* or *tunduwaram* to the proprietor and takes the rest of the produce to himself.

Sukhavasi tenants.

Permanent tenants are also known as *sukhavasi* tenants. They have a permanent right to their holdings without power to sell them, except with the mirasidar's consent. They cannot be ejected by the mirasidar and are entitled to compensation for loss of their interest when their lands are taken under the Land Acquisition Act.[1]

Swamibhogam and tunduwaram.

Swamibhogam literally means the share payable to the *swami* or proprietor; and *tunduwaram*, a bit of share. Both denote the part taken out of the kudiwaram and paid to the landlord by the tenant in acknowledgment of the legal right of property vested in the former. The amount payable as *swamibhogam* or *tunduwaram* is fixed by agreement, and in its absence, is determined by the custom of the locality. It is paid in grain or in money, and in the former case is sometimes a percentage of the gross produce. The payment of *swamibhogam* or *tunduwaram* is decisive of the question that the proprietary right in the land belongs to another.

Compared to the coloni and aratores.

The *ulkudis* bear a strong resemblance to the *copyhold* tenants of England, and the *coloni* and the *aratores* of the Roman Empire. They are attached to the soil and occupy the same land from father to son for generations having only a hereditary right therein without power of alienation. They are liable to pay only the customary rent and cannot be ejected as long as they pay it. On default of heirs, the lands revert to the proprietor.

1. *Appasami Mudali* v. *Rangappa Nathan*, 4 Mad. 367.

Features of South Kanara tenancies.

In South Kanara the proprietor carries on the cultivation of his lands with the aid of temporary or permanent tenants. The two features that distinguish the tenancies of South Kanara from those of the east coast are (1) rent is never payable by a share of the produce, but is always a fixed one, either in money or a definite quantity of the produce, and (2) the tenants are entitled to compensation for improvements made by them before they are evicted.

Chalgeni.

Temporary tenants are known as *chaliegaini* or *chalgeni* tenants. The tenancy is usually allowed to descend from father to son at the original rent agreed upon, but the landlord has got the right to raise the rent or oust the tenant. The latter is entitled to compensation for everlasting improvements made by him before he is evicted. He is entitled to reasonable notice on eviction.[1]

Mulgeni.

Permanent tenants are known as *mulgaini*, *mulgeni* or *kattugudi* tenants. The *mulgeni* tenancy is a tenancy for ever at a fixed rent. The ordinary form of *mulgeni* is one fixed in money or in produce, or with both. This species of tenancy is as good as a freehold, and the *mulgeni* tenant is rather a kind of subordinate landlord or sub-proprietor. It is hereditary, and the tenant can mortgage, sell, lease, and bequeath his lands, and in default of children can adopt and pass the lands to his adopted son. When the *mulgenigar* dies without heirs, the lands revert to the *mulgar.*[2]

Increase of assessment.

The High Court held that in view of Section 35 of the Revenue Recovery Act the enhancement of revenue made at the revision of assessment in respect of a *mulgeni* holding should

1. *Subba* v. *Nagappa*, 12 Mad. 353.
2. *Secretary of State* v. *Shitaramappa*, 42 Mad. 327.

be borne by the *mulgar* and not by the *mulgenigar*. The effect of the decision was to throw the whole burden on the *mulgar* so that in many cases the rent reserved was either absorbed or considerably diminished by the enhanced assessment, and in some cases the latter exceeded the former ; and the High Court pointed out that the remedy was legislation. Accordingly the Mulgeni Rent Enhancement Act (XIII of 1920) was passed.

Presumption.

There is no presumption that a tenancy is either *chalgeni* or *mulgeni*, and the claim of a *mulgeni* right which is a permanent one being in derogation of the landlord's right to possession when the relation of landlord and tenant is found to exist between the parties, the tenant must establish the *mulgeni* right claimed by him ; and neither long possession nor payment of a uniform rent by itself will establish that right, though coupled with other circumstances it may.[1]

Rights of mulgeni tenant.

A *mulgeni* tenant being only a tenant in perpetuity, the law relating to an occupancy ryot does not apply, and he is not entitled to cut timber or fruit trees standing at the date of the grant.[2] But in the absence of a prohibition in the lease, he is entitled to cut and appropriate trees in the holding planted by him or of spontaneous growth.[3] Though he is entitled on eviction to the value of the improvements made by him, the right arises only on eviction and may never mature and therefore cannot be attached and sold in execution of a decree against him.[4] A *mulgeni* tenant cannot without the consent of the *mulgar* put an end to his tenancy.[5]

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1. *Gopala Kudva* v. *Juvappa Kamthi*, (1930) M.W.N. 874 following *Naina Pillai Marakayar* v. *Ramanathan Chettiar*, 47 Mad. 337 : 57 I.A. 83
2. *Gangamma* v. *Bhommakha*, 33 Mad. 253.
3. *Krishna Charya* v. *Anthakki*, 29 M.L.J. 314.
4. *Anantha Bhatta* v. *Anantha Bhatta*, (1918) M.W.N. 887.
5. *Krishna* v. *Lakshiminaranappa*, 15 Mad. 67.

Vaidageni.

Leases for terms of years are known in South Kanara as *vaidageni*. Both with this and the *mulgeni* it is not infrequent to have a progressive rate of rent. This is specially common when the lease is of land, which it is proposed to plant as a cocoanut garden and the tenancy is then called *nadugi* in the northern part and *kuikanom* in the southern part.

CHAPTER II.

THE VILLAGE SYSTEM AND THE MIRASI TENURE.

Formation of villages.

The Dravidians and the Aryans had, when they settled in India, passed from the pastoral state to that of settled agriculture, become associated for mutual advantage and protection and settled down in fixed habitations called villages. At the time of the original settlement the settlers would have been of the same family, of the same clan or of the same tribe. There was plenty of unoccupied land and the ruling power was not likely to throw obstacles in the way of these settlers who proposed to convert an unproductive jungle into a source of revenue. The original settlement being in the midst of a dense forest, the settlers would naturally select an open piece of land and make clearances therefrom. This process would involve immense labour and be impracticable for a single man to effect. The settlers therefore combined themselves into communities which was further rendered necessary by the common dangers to which they were exposed, arising from beasts of prey abounding the jungle and bands of maraudars on the march, and in later times, the undue exactions of the state. The construction of watercourses, tanks and other sources of irrigation could only be accomplished in those days by a combination of men. Situated as the community were in the midst of jungle and far removed from towns they provided themselves with the necessaries of agriculture by inviting and settling among themselves artizans and other persons necessary for an agricultural population. In the open spot selected by the community a high ground was generally chosen for their habitations, called the *nattam* or *gramanattam*. The common feature of all villages in the east coast is a central site generally on a high ground, surrounded first by cultivated lands, and then waste

with sometimes the detached lands of some other village intersecting the lands of the village. In the words of the Privy Council, "An Indian village or *mauza* is not a mere village in the sense of an aggregation of houses or huts, with the land actually cultivated by its inhabitants. It is a division of a Pergunna, and may, as in the present instance consist of dwellings, of lands cultivated, and of a large extent of forests in which the right of a zemindar may co-exist with rights belonging to the villagers."[1]

Ancient Hindu revenue administration.

The village has been the unit of administration in India from the earliest times of which we have any record. The Hindu system of revenue administration compares not unfavourably with that existing at the present day. The earliest reference to it is that given in the Institutes of Manu. The administration was carried on by a chain of officers in regular gradation one above the other, the lowest of whom was the lord of a single village, then the lord of ten villages, of twenty, of hundred, and above all, of thousand villages with a town. A similar system prevailed in the time of *Chandragupta Maurya.* First the village headman; above him, the circle officer, *gopa*; above him, the *sthanika*; and above him the governor of the province.

Two officers in each village.

Under the Hindu system there were two officers in each village representing the king, the *headman* and the *karnam.* The former attended to the collection of the king's share of the produce, assigned land to new settlers and looked after the general affairs of the village; and the latter maintained an account of cultivation, showing the actual quantity of land held by each ryot, the part of it cultivated, his means of cultivation, the actual produce, the proportion the state was entitled to receive whether by agreement or usage, the share actually

1. *Sheikh Zahuruddin* v. *Collector of Goruckpore*, 4 Beng. L.R. 36 (P.C.).

received, as well as an account of every other circumstance or transaction in the village connected with the tenures under which the land was held. The accounts maintained by the *karnam* operated as a check on the collections made by the *headman*.

Aggregation of villages.

These villages were aggregated together more or less numerous according to their size and importance into divisions which went by the name of *mahanams, nadus, maganes* or *hoblis, bisis* or *khands, vishayas* or *kottams* in the different parts of the Presidency. Each of these divisions was placed in charge of an officer known as the *nattan, nattuthalaivan, deshmook, desayi, bissoi* or *khand-adipati.* He exercised supervision over the headman, received the collections made by him, superintended generally the collection of revenue entrusted to his charge, and was responsible for the whole revenue of the division. He was assisted by another officer called the *despondi, stalla karnam, nadu* or *nattu karnam,* or *kanungo.* He stood to the *karnam* in the same relation that the head of the division stood to the *headman.* The accounts of the *karnam* were transmitted in detail to this officer who formed extracts of the state of cultivation and the capacity of the several villages under his charge. The accounts of this officer operated as a check on the collections made by the head of the division. A number of these divisions was again made into provinces which went by the name of *simais, mandalams, valanadus, prants* or *dandputs,* or *rushtras.* Each province was placed in charge of a viceroy known as the *arasu, perumal, raja, nayak* or *nayakkan,* or *sir deshmook.* He was assisted by a provincial accountant who went by the name of *sir despondi, desakulkarni,* or *kanungo.* The accounts of the latter operated as a check on the collections made by the former. The orders of the king did not reach the villages directly but passed through the several grades of officers. The Hindu system thus involved a gradation of officers, and at every stage

one officer operated as a check on the other. The king treated his kingdom as a private estate and regularly administered it by means of subordinate officers whose position was no better than land stewards. There was no room for an intermediate class of proprietors between the king and the cultivator, and the central government was constantly furnished with every necessary information concerning its land revenue and other territorial rights.

Under the Mahomedans.

The Mahomedan conquerors adopted divisions corresponding in a great degree with those of the Hindus but their organisation was less complete. Above all was the *subah* placed in charge of a viceroy known as the *subahdar* or *nazim*, who was assisted by a *diwan* for the purpose of superintending the finances, then the *sirkar*, the *pergunnah* or *mehal*, the *taraf*, the *kismut*, and the *mouza* or the village. In later times in time of Jaffier Khan the *subah* was divided into *chucklas*, and each *chuckla* was placed in charge of an officer called the *amildar*.

Description of an Indian village.

A village, geographically considered is a tract of country comprising some hundreds or thousands of acres of arable and waste lands; politically viewed it is a little republic or rather a corporation having within itself its municipal officers and corporate officers. Its proper establishments of officers and servants consist of the following description: (1) the headman, differently called in different parts; (2) the karnam; (3) the taliary; (4) the toty; (5) the nirgunti; (6) the boundaryman; (7) the panchangi; (8) the brahman; (9) the schoolmaster; (10) the blacksmith; (11) the carpenter; (12) the potter; (13) the washerman; (14) the barber; (15) the cobbler; (16) the cowherd; (17) the doctor; (18) the dancing girl; (19) the musician; and (20) the shroff. The above description represents the full complement of village servants who are found in fully developed and well-to-do villages. Some villages,

however, do not possess all of them, but only such as are absolutely necessary for an agricultural population. They usually contain twelve village servants who are known as the *baraboolotv* or twelve men comprising (1) the headman; (2) the karnam; (3) the shroff; (4) the nirgunti; (5) the toty or taliary; (6) the potter; (7) the blacksmith; (8) the goldsmith; (9) the carpenter; (10) the barber; (11) the washerman and (12) the astrologer. A village servant is also known as *pettanadar*.

Remuneration of village servants.

Village servants are remunerated by grants of land or land revenue, or by a small share of crops before division, or by both. Generally the headman, the karnam and the watchman are remunerated by both. Grants of land or land revenue go by the generic name of *manyams* or *punulu manyams*, and as these grants were made at the original formation of the village and entered in the village register and enjoyed under its authority, they are known as *tarapadi manyams*. Assignments of land are known as *nila manyams* or *sarva manyams*. The lands were originally at the disposal of the state and granted to the village servants as remuneration for their services. The lands are attached to the office and the grantee is entitled to remain in possession and enjoyment of the lands as appropriated to the office without paying any revenue thereon; and the moment he ceases to hold the office, he has no claim to the lands. Assignments of land revenue alone are known as *tirwai manyams* or *manyams*. In this case the grantee was in possession of the lands at the time of the grant and the revenue thereon was remitted, or the land was in the possession of a third person and the grantee was allowed to receive the revenue thereon from him. When the grantee ceases to hold the office, he becomes liable to pay the full assessment in the former case, or has no right to receive the revenue from the third person in the latter case. The small share of the crops received by the village servants which is a percentage on the gross

produce of all the lands under cultivation and called also a fee is known as the *marah*, *merei*, *russoom*, *vertana*, or *swatantaram*. This fee or percentage is a determined quantity for so much measure of land fixed by custom and varies with each village. This is set apart as soon as the produce of a field is cut and ascertained and is shared by all the servants entitled to it. The share therein payable to each varies with each village and is regulated by his importance and usefulness to the village community. Section 52 of the Revenue Recovery Act places the payment of this fee on a statutory basis and declares that all fees or other dues payable by a person to or on behalf of the village servants employed in revenue or police duties may be recovered as arrears of land revenue. The grant of land or land revenue constituting the emolument of a village office is generally insufficient to maintain its holder and has to be supplemented by the fee in grain. This was adopted as a matter of deliberate policy to secure the dependence of village servants on the goodwill of the villagers. The presence of village servants does not prevent the villagers from having their work discharged by others. All that they can claim is to sue for the recovery of their emoluments, either of land revenue or fee. The government at a later day thought that this mode of remunerating village servants by fees paid by the villagers was a difficult and troublesome matter and resolved to discontinue them and levy a tax instead called the village cess. After the levy of this cess, the village servants in *ryotwari* tracts have no legal right to collect any fee from villagers. But in practice, whenever a village servant is found useful, the villagers allow him a percentage as a matter of indulgence. The same policy may be applied by government to permanently settled estates. In such a case proprietors who are bound to pay the village servants by fees are no longer liable to do so. The cost of the village establishment may or may not have been included in the assets at the time of the permanent settlement. In the former case the government makes an abatement in the

peshkush to the extent of the cost of the village establishment included in the assets; and in the latter case it enhances it to a like extent. In either case the collection of any fee for the remuneration of the village establishment is declared illegal and penalty is provided for such collection.

Division of a Tamil village.

The whole area of a Tamil village is divided into (1) *warapat*, (2) *tirwapat*, (3) *tarisu*, and (4) *poramboke*. *Warapat* are cultivated lands which give waram or share of the produce, generally *nanja* or wet lands, which has now been commuted to a money payment in *ryotwari* tracts. *Tirwapat* are lands which pay tirwa or fixed money tax, generally *punja* or dry lands. *Warapat* and *tirwapat* are also used to denote lands paying revenue as distinguished from *manyams*, lands paying no revenue. As under the ryotwari system the share of the produce payable to the state in *warapat* lands has been commuted to a money payment, *warapat* and *tirwapat* are classified under one head. *Tarisu* are waste or uncultivated lands which are divided into two classes, *sheykal karambu*, cultivable waste, and *anadi karambu*, immemorial waste. *Poramboke* are lands incapable of cultivation or set apart for public or communal purposes. They are of various kinds classified according to the purposes for which they have been set apart. In common parlance any land that does not yield revenue is known as *poramboke*. But it is liable to revenue, but the right to levy assessment on it is given up by government for certain reasons; and if those reasons cease to exist, or are held to be inadequate, the government can levy assessment if it chooses. Under the ryotwari system waste are classified into (*a*) *assessed*, (*b*) *unassessed* and (*c*) *poramboke*. *Assessed* waste are cultivated lands which have been left uncultivated, lands relinquished by ryots, and lands bought in by government in revenue sales. *Unassessed* waste are lands to which no classification or assessment has been assigned because they are considered unfit for cultivation. *Poramboke* denote lands set apart for public

or communal purposes. They are also unassessed. The freehold in these three classes of lands is in government.

Nattam.

Nattam or *gramanattam* is the site on which village habitations are situated, and is held free of assessment. It is included in *poramboke* and is known as *nattam poramboke*. It is on this site that the villagers must build their houses. This does not mean that they are absolutely prevented from building their houses elsewhere, but only they will have to pay the assessment fixed on the land on which they build houses and cannot claim to hold it free of assessment. In *nattam* are included *pilakadai* or backyard of houses, a small portion of ground immediately adjoining the dwellings of villagers, and *kollai* or homestead. Both are held free of assessment. The distinction between the *pilakadai* and the *kollai* is that the former immediately adjoins the house and the latter may be at some distance from it. Similar to the *kollais* are the *pati peradus* of the Northern Sirkars. *Pati peradus* literally mean backyards situated within or on the outskirts of the village site, as distinguished from the backyards adjoining the houses and the necessity for separate backyards arose from want of sufficient space in the vicinity of house sites. They were also enjoyed free of assessment. At the time of the inam settlement they were treated as inams. The freehold in the soil of *gramanattam* in a ryotwari village is in government. Its right therein consists in regulating the distribution of unoccupied *nattam* among the intending applicants for house sites and to ensure its utilization for such purpose. The owners of houses and house sites in *nattam* as well as grantees of unoccupied *nattam* who have satisfied the condition of the grant by building houses are at liberty to dispose of them in any manner they choose. The classification of land as *nattam poramboke* or government *poramboke* by the revenue authorities is not conclusive as to the character of the land as *poramboke*; nor does the omission to describe it as such

prevent the government from showing that it is really *poramboke*; nor does the mere description in the settlement register as temple *poramboke* vest any title in the temple. Where lands are registered as *tope poramboke*, the *prima facie* title in them vests in government. In the vacant *gramanattam* it is usual for ryots to store straw ricks, manure and other materials, and such storing will not give title by prescription as against government. But erection of huts, tethering cattle and enclosure of the site and other acts of open user for over sixty years will constitute adverse possession as against government. In a *mirasi* village also the presumption is that the freehold in the soil of *gramanattam* vests in government but the presumption is liable to be rebutted by proof of grant, prescription or user. In grants of whole inam villages the presumption is that all *porambokes* are intended to be conveyed, unless there are words in the grant or the surrounding circumstances to show that they were not intended to be conveyed.

Division of a Telingana Village.

The same division of lands is also found in a Telingana village. A Telugu village is thus described by the Board of Revenue in its minute, dated 5th January, 1818: "A Telinga village in regard to its internal constitution, and the community of interest which unites its inhabitants, is precisely the same as one in the Tamil country. Its lands are also divided, in a similar manner, into waste, and cultivated land; the latter is also sub-divided into mauniums, or lands on which the whole of the Government tax has been alienated to individuals, khundregas, or lands on which a portion only of the Government tax has been so alienated, and lands upon which the full tax is paid to the Government. The nature of the tax payable on the land seems also originally to have varied, as in the Tamil country, with the nature of the crop. On the *maganee*, or lands cultivated with a wet crop the *Koroo* or Government share of the produce was taken. On the remainder, being the *made paloo* or Ryot's share, literally *the share of the*

ploughhandle, and on land cultivated with a dry crop, or with garden or plantation produce, a fixed money rent was generally paid, in the same manner as in the southern provinces ; but in some cases the revenue on dry crops was rendered in kind "[1].

Existence of village communities.

The existence of village communities has been traced to Java, among the obscure Semitic tribes in Africa, to the Orkney and Shetland islands, to Peru, China, Mexico and Arabia, to Scandinavia, Germany, England and other continental countries,[2] countries wholly distinct from one another. Applying the historical method of investigation, *Sir Henry Maine* has been able to establish that the resemblances found existing between the village communities of the East and the West are too strong and numerous to be accidental, and the differences between them are due more to climatic than basic causes.[3] This led *M. Lewinsky* to remark that village communities represented a stage in the historical development of agriculture through which all countries in the world have passed.[4] One would therefore expect that the same evolution took place in India also, as held by *Sir Henry Maine* and his school ; and until quite recently it was the accepted view that India consisted of groups of village communities which were described as little commonwealths, independent, self-acting, organised, social groups. But a later school of Anglo-Indian administrators including *Sir Alfred Lyall, Sir William Hunter, Dr. Maclean* and *Mr. Baden Powell* has questioned the conclusions of the other school as being based on incomplete information and defective data and denied the existence of the village communities as described above as a general phenomenon in India. *Dr. Maclean* put forward the view that by the side of this type of villages which he called the republican or oligarchic type,

1. I *Revenue Selections*, 909.

2. *Maine, Early History of Institutions*, 77. ; *Lavaleye, Primitive Property* 2.

3. *Maine, Village Communities*, 12, 103.

4. *Origin of Property*, 56.

there was another type, a non-republican, severalty, or individual type in which there was no claim to a joint area including waste and in which the government besides receiving taxes had assumed the duty of assigning waste lands for cultivation to strangers.[1] This theory was elaborated by *Mr. Baden Powell* who concluded that the second type was a purely indigenous and Dravidian one, and that the first type was the result of special causes, such as colonisation, conquests or grants.[2] This theory is based upon a comparison of the Dravidian customs in other parts of India; and the absence of the village communities in South Kanara, Malabar and the Northern districts is relied on as confirming that view.

Their origin.

It is not now possible at this distance of time to give an exact account of the origin of the village communities. Tradition ascribes them to the spontaneous agreement of mankind in the early stages of society,[3] and probably they were suggested to the first settlers by the necessities of the situation they were placed in. Colonisation of an immense tract of country will, no doubt, bring about their formation, but there is no tradition of any colonisation of the south by the Dravidians. Conquest also brings about the same result. It vests in the conquerors equally with a right to the land conquered, and the conquered people are either driven out to the hills or reduced to a servile position under the conquerors. As an instance of conquest, we have the traditional one of Tondamandalam by one of the Chola kings and its subsequent colonisation by the Vellalers. So also grants by the sovereign. They superimpose a landlord class over an existing population and the grantees share the privileges equally.

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1. *Man of Adminis*, I. 112, note.
2. *Village Community*, 366, 367; L. S. B. I. III 108-116.
3. *Vishnu Purana*, 54.; *Wilson, History of India*, VII. 305.

Due to other causes also.

Thus these three causes, colonisation, conquest and grants bring about the formation of village communities. But when one goes further and maintains that in the absence of these causes, the prevailing form of tenure is of the non-republican, severalty or individual type, the theory becomes open to doubt. There is no reason to suppose that the historical evolution of property was different in India from what took place elsewhere. The theory admits the existence of village communities in the Tamil districts, but it is accounted for on the ground of the three special causes enumerated above. If it is supported on the ground of colonisation and conquest of the south by the Tamil kings, the theory assumes that the Dravidians entered India from outside and loses all its force on the validity of the other theory propounded by *Dr. Maclean* and *Sir Herbert Risley* that the Dravidians are indigenous to India and especially South India. The formation of tenures is as much the result of the physical configuration of the country as of ethnological or political causes, and the physical features of South Kanara are not congenial to the formation of village communities. The assertion that they did not exist in Malabar is open to question. A statement to that effect made by *Mr. J. D. Mayne* has been doubted by *Sir C. Sankaran Nair*. The supporters of the theory have not paid sufficient attention to the importance of the *tara*, a purely Dravidian institution. The *tara* formed a small republic represented by the *karnavars* of the Nair inhabitants who constituted it and presented a striking resemblance to the village republics of the east coast.[1] The *nad* or country was a congeries of *taras* or village republics, and the *koottum* or the assembly of the *nad* or country was a representative body of immense power which, when necessity existed, set at naught the authority of the Raja and punished his ministers

1. *Malabar* Dt. M. 90.

when they did unwarrantable acts.[1] The *Godavery District Manual* informs us that originally in that district which forms part of the northern districts, village communities with the usual functionaries of these miniature republics existed in the maritime coasts on the plains.[2] There has been a conquest of the northern districts by the Chola kings within whose dominions village communities undoubtedly existed. They have made numerous grants which would have been on the basis of village communities, and their absence now shows that it is due to later disintegrating causes. The existence of *visabadi* villages there is a faint echo of the existence of village communities in the past.[3] The distinction that was found existing between *kadim* ryots and *payakarries* shows the existence of a privileged class who have been rendered into that position by overassessment.[4] Village communities were found existing among the *Kallars*. If, as *Dr. Taylor* opines, they are of the same race as the *Kurumbars* and are the aborigines of India,[5] village communities could not have been the result only of the three causes abovementioned. The second type of villages far from being indigenous appears to be due to the decay of the villages of the first type brought about by later disintegrating causes. The force with which they operated is seen by the fact that in North Arcot where village communities undoubtedly existed, the Collector reported that there was none there.[6]

Co-sharers.

The co-sharers in these village communities were persons who claimed descent from a common ancestor. As long as the community were in a tribal state, kinship was the bond that united them together. But when they left the tribal state and settled down in villages, kinship ceased to be the bond that

1. *Malabar* Dt. M. 90.
2. 167.
3. *Nellore* Dt. M. 270.
4. *Ibid.*, 477.
5. *Madura* Dt. M. Part II. Ch. I 49, 50.
6. Dt. M. 118.

united them together and land took its place.[1] Kinship being still the predominant idea, the community professed a common descent for which there was no foundation. In some cases it is quite certain that there can be no common descent as the members of the community are of different castes and even of different religions. As, however, land is the bond of union, it creates an artificial relation of brotherhood.

Decline of village communities.

Village communities in the Presidency declined as the result of the following causes :-

1. Overassessment in Mahomedan days. On account of such overassessment many co-sharers gave up their lands and the government let them to others.

2. The introduction of the ryotwari system. Under this system the villagers were asked once and for all to declare the amount of land which they would engage and pay for, and the rest of the lands were given away on darkhast.

3. Cessation of payment of fees and levy of a cess instead which made the village servants independent of the villagers.

4. Grouping, amalgamation aud division of villages.

Mirasi tenure.

The term *mirasi* tenure is applied in South India to denote the tenure of villages held jointly by co-sharers who constitute themselves the proprietors thereof according to their shares ; and is, in fact, the survival of the system of village communities. Notwithstanding the different disintegrating influences to which the village communities were subject, some villages in the Chingleput district were able to preserve them and such villages are known as *mirasi* villages. At the time when that district came under the control of the East India Company they were in a

1. *Maine, Village Communities*, 64, 72.

decaying condition. The aim of the earlier administrators was to infuse into them fresh strength and to revive them; but the later school of administrators led by Sir Thomas Munro deliberately wanted to put an end to them and by a series of administrative acts succeeded. The introduction of this policy put an end to the principle of co-operation and the self-contained organism on which village communities were essentially based.

Its distinctive feature.

The distinctive feature of the *mirasi* tenure, a feature which is as old as the tenure itself and which still survives is the division of the village into *pangus* or shares, each made up of lands yielding an equal amount of produce and each including a proportionate share of all the benefits of common property, such as the use of the village waste, mines, quarries, fisheries, forests and pastures. The village is divided into *karays* and each *karay* comprises so many *pangus*. The lands constituting a *pangu* are not situated in one place forming a compact whole, but are distributed throughout the village having regard to the superiority and inferiority of the soil, and facilities for irrigation. They comprise both *nanja* or wet lands and *punja* or dry lands, and the possession of a *pangu* carries also a right to a proportionate share of all the benefits of the common property. This division into shares is supposed to have been made at the original settlement of the village, the number of shares apparently corresponding to the number of settlers who first occupied the village or of the labourers which each settler brought with him. All villages are not divided into the same number of shares. One village is divided into 4 shares, another into 60, a third into 160, and so on. The number of shares according to the original distribution is never forgotten. When one original share held by a family is divided into a number of shares on division or alienation, the divided or alienated share is never reckoned as an independent share but only as a fraction thereof. Conversely when one

family acquires one or more shares of other families, it is said to own so many shares.

Agrahara vadai.
Pandara vadai.

Mirasi villages in the present districts of Madura, Ramnad and Tinnevelly were of two classes, *agrahara vadai* or *vadiki*, and *pandara vadai* or *vadiki*. *Agrahara vadai* was a village in which the absolute proprietary right was vested in the Brahmans. The village was divided into *pangus* and *karais*, and the right to each *karai* was recorded in the village *kosham*, *i.e.*, register of village lands. It did not carry with it the right to a specific plot of land in perpetuity, and a new distribution of land was made at stated intervals; in fact the form of enjoyment was *karaiyedu*. The village was common to the whole body of proprietors, and each proprietor could sell, mortgage or transfer his share in any way he pleased, though it had to be assented to by the other sharers. All the sharers were jointly and severally liable for the whole revenue of the village. *Pandara vadai* took its name from its being granted to Sudras and was more a distinction of caste than of tenure. This was also divided into *pangus* and *karays* which were recorded in the *kosham* and were subject to mortgage and sale. Sudra *mirasi* villages in South Arcot went by the name of *manavadoo* villages.

Karay villages.

Villages held jointly by co-sharers in the districts of Madura, Tinnevelly and Tanjore went by the name of *karay* villages. The co-sharers in these villages were known as *karaikarans* who held the lands in shares. The form of enjoyment was *karaiyedu*. Among the Kallars, an aboriginal tribe, a certain tract of country is the property of a *karai*, and the owners thereof are the members of the *karai*; and when the lands of a *karai* are disposed of, the consent of all the owners of the *karai* must be obtained. The term *karai* is also used to denote the division of lands supplied by channels for the purpose of kudimaramat, so that the incidence of the grain tax or labour may fall equally on all the landholders.

Compared to Russian mir.

The Russian *mir* is an instance of the common property above described. The land belonged to the commune, and the individual as a member of the commune had merely the usufruct, the right to the temporary enjoyment of a share. The commune was responsible for the discharge of those liabilities which by way of taxation or otherwise were imposed by the government. This community of rights and privileges, the members of this political unit and the lands which belonged to them collectively were called the *mir*. The *mir* was originally an association of freemen, and when the Czar became their father, ruler and master, they became his children, subjects and servants, but never serfs.

Three modes of enjoyment.

Mirasi villages comprised three varieties :—

(1) *Samudayam* or *pasankarai* villages.

(2) *Palabhogam*, *atchandrarkam* or *arudikarai* villages.

(3) *Ekhabhogam* or *ejaman gramam*.

Samudayam or pasankarai.

(1) *Samudayam* or *pasankarai* :—

It comprised two varieties; absolute *samudayam* or *samudayam* properly so called, and *karaiyedu*. Under the former the *mirasi* of the entire cultivated area belonged to the entire body of the *mirasidars* and the like that of the common waste and the common fallow lands, each in proportion to the share or parts of the share he held, being entitled to share in the common property. The lands were cultivated either by the joint stock and labour, and cattle and implements, of all the members of the community, the entire produce being shared by them according to their respective shares, or separately by each member, the produce from all the cultivated lands being subsequently shared by all of them according to their respective shares. The ownership in the cultivated lands was purely a communal one, and the only land which a member could hold separately was his

house site in the *nattam* including *pilakadai* and *kollai*.

Karaiyedu.

Under the latter form or *karaiyedu*, lands were temporarily cultivated in separate shares by the co-sharers and were subject to re-distribution at stated intervals. The lands were re-distributed generally once in 30, 27 or 12 years. The principal co-sharers met and distributed the lands for such periods as might be agreed upon, and wrote and kept cadjan records with each of them evidencing such distribution. A custom enabling some only of the co-sharers to so distribute the lands is valid. This form of enjoyment appears to have been prevalent in comparatively recent times. Where lands held in *karaiyedu* were mortgaged and subsequently the mode of enjoyment was changed into *atchandrarkam*, the mortgagee could not proceed against the identical lands mortgaged, but only against an area of land equal to that mortgaged having regard to good and bad. The incident of the *samudayam* tenure both in the absolute and *karaiyedu* forms was the joint liability of all the co-sharers for the government revenue. The co-sharers were competent to make alienations of their shares by way of mortgage, sale or otherwise. Where the *samudayam* tenure prevailed, it would give a right only to an undivided share in the common enjoyment; and where the *karaiyedu* prevailed, the lands were liable to distribution at the end of the stated period. A suit for partition lies whether the tenure of the village is *samudayam* or *karaiyedu*. In the case of sales the members of the community had the right of pre-emption.

Palabhogam, atchandrarkam or arudikarai.

(2) *Palabhogam, atchandrarkam* or *arudikarai* :—

Under this form the periodical distribution of lands was given up and all cultivated lands, *warapat* and *tirwapat*, were permanently distributed, but all other rights and privileges were held in common as also waste and lands reclaimed since the general division. The cultivated lands were held in

severalty with individual ownership and individual liability for the payment of government revenue.

Ekhabhogam or ejaman gramam.

(3) *Ekhabhogam* or *ejaman gramam* :—

In some districts all the lands of a village had become vested in a single individual by purchase or other means, when it was known as *ekhabhogam* or *ejaman gramam*. In the Tanjore district these villages were mostly hamlets or detached portions of villages properly so-called. Under the former native government every mirasidar of any importance obtained the sanction of the ruling power to constitute his individual holding, however small, into a separate village called after his own or other favourite name. The term *ejaman gramam* is also applied to another class of village. A village in which all the cultivated lands were held in common and were distributed under fixed rules by the *ejaman* or headman was called an *ejaman gramam*. The *ejaman* where he existed had extensive rights; no sale could be effected without his permission, nor could a stranger settle in the village of which he conducted the *praverticum* without his consent.

Settlement of Tondamandalam.

There is a tradition regarding the settlement of Tondamandalam by the Vellalars. Originally Tondamandalam comprising the districts of Chingleput, North and South Arcot was covered by a vast jungle called the *dandakaranium* inhabited by the Kurumbers. For reasons which are not known, Kullotunga Chola of Tanjore sent an expedition under his illegitimate son, Adondai Chakravarthi, against these Kurumbers, and a fierce battle was fought at Puralur. In this battle Adondai was defeated and was forced to retreat to Sholinghur. Encouraged there by a dream, he renewed the contest and defeated the enemy with great slaughter. The Kurumbers were exterminated and Adondai settled a body of colonists whom he brought with him on the conquered country. The original settlers having found the clearance of land difficult came back, and Adondai settled thereon another body

of colonists; and on account of the uninviting nature of the country devoid of all natural sources of irrigation to which the settlers who were taken from other fertile districts were accustomed, he conferred upon them certain privileges which they had not in their own country. The right of *kaniatchi* in the Chingleput district carries certain privileges which are not found in other districts. They are:

Special privileges in Chingleput.

(1) *Kaniyadsi, oor* or *grama manyam*, a certain extent of land held by the *kaniatchikarars* free from any payment of revenue to the state. This has been enfranchised under the inam rules at the time of the inam settlement.

(2) the right to receive

(*a*) certain fees called *kanimerai or kanisemah, kuppatam, kalpadi, kalavasam* on the produce of all cultivated lands, and

(*b*) *tunduwaram* or *swamibhogam* on all lands in the occupation of non-mirasidars. These fees are known as *swatantarms*. The fees payable to the mirasidars as such were due out of the gross produce, *i.e.*, both by the ryots and the government. The latter has recognised the payment of *swatantarams* but has made them payable entirely by the ryots, liberal allowance having been made with them in arriving at the money rates of assessment charged on their lands. The *swatantaram* payable under these circumstances is a yearly sum of two annas in the rupee of the government assessment, this amount being held to represent the old average of 3 per cent. of the gross produce of the year. These fees are recorded by government in the land revenue registers and their collection is left to the mirasidars themselves. In *Sakkoji*

Rao v. *Latchmana Goundan*[1] it was held by a Full Bench that, when *swatantarams* were claimed by the mirasidars from ryots holding under pattas from government, the former must prove a custom of the village or of neighbouring villages enabling them to do so; similarly also in the case of a claim to *tunduwaram*.[2]

Right to waste.

As regards the mirasidar's right to waste, a Full Bench has held that there is no presumption of the existence of any particular right in favour of the mirasidars and that any right, when claimed, must be proved by grant, prescription or user.[3]

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1. 2 Mad. 149.
2. *Kumarappa Reddy* v. *Manavala Goundan*, 41 Mad. 374.
3. *Seshachallam Chetty* v. *Chinnasami Asary*, 40 Mad. 410.

CHAPTER III.

PERMANENTLY SETTLED ESTATES.

Krory.

We have seen that under the Hindu system of revenue administration there was little room for an intermediate class of proprietors interposed between the sovereign and the subject. The introduction of such a class is an innovation made by the Mahomedans. The authors of the Fifth Report have attempted to trace the origin of the word *zemindar* to the time of the Hindu Rajas. They say that it went by the name of *chaudri* which was subsequently changed by the Mahomedans to that of *krory* or collector of a *kror* of dams (Rs. 250,000) in consequence of the lands being divided into charges yielding that amount, and that it was not till a late period of Mahomedan government that the term *krory* was superseded by that of *zemindar*.[1] But the existence of *hill zemindars* in the Northern Sirkars and of *poligars* in the south who claim descent from the ancient sovereigns of the country and who exercised sovereign rights within their territories shows that the status of *zemindars* originated in other ways besides the conversion of old Hindu chiefs into Mahomedan officials.

Intermediate agency.

The Mahomedan conquerors left that portion of the country which they had not been able to subdue completely in the hands of the old Rajas and brought the rest of the country under direct dominion. Their settlement in the country being that of a military colony, they did not trouble themselves with the details of revenue administration. Foreigners by birth, by religion and language, and constantly engaged in war from the very first, they found great difficulty in a plan which demanded the close and constant supervision of a native hereditary prince. The Hindu system involved a close

1. *Fifth Report*, II. 7.

scrutiny and local knowledge, and the checks and counter-checks which it provided were distasteful to them. They therefore preferred the system of intermediate landholders who would take the trouble off their hands and who should have both power and influence to enforce the revenue demands against individuals, and in the Hindu revenue officers they found such a body ready to their hands. Thus the land stewards who under the close watching eye of a resident Hindu prince were only public servants acquired under the Mahomedans a fixity of office and independence which prepared the way for their development into landed proprietors in the British period.

Effect of Mahomedan conquest.

Thus the Mahomedan conquest led to the system of intermediate land-holders and of farmers and renters, and to the introduction of Persian names and terms to denote ideas connected with land tenures, though those names and terms rarely imported any fresh ideas. It brought about also a conflict between Hindu and Mahomedan ideas. The Hindu system from the office of the minister down to that of the village headman was based on the principle of hereditary succession ; while the Mahomedan system was anti-hereditary. In the conflict between the two systems the hereditary principle which was too firmly established to be rooted out received a qualification in the recognition of the hereditary succession by the state.

Hill zemindars and zemindars on the plains.

In the Northern Sirkars which came first under Mahomedan dominion and where it lasted longest, the zemindary system was best developed. Two classes of zemindars were recognised by the Mahomedan government who may roughly be classed as the *hill zemindars* and the *zemindars on the plains.* The *hill zemindars* were generally the descendants of the ancient sovereigns of the country, and on account of the hilly and wooden

nature of the country were not completely subdued by the Mahomedans. These *hill zemindars* were therefore allowed to continue in their hereditary possessions on payment of a tribute which was fixed with reference to the amount of public dues demandable by them from the ryots. The obligations which they were required to perform were of a feudal character. On the other hand the *zemindars on the plains* who were generally the descendants of the revenue officers under the Hindu rajas and who were completely subdued by the Mahomedans were never acknowledged as independent or tributary chiefs nor as having any proprietary right to the lands within their districts.

Zemindar's rights and liabilities.

The word *zemindar* literally means a landholder, and in the eye of government he was no more than an officer or collector of revenue without any proprietary right over the lands under his charge. The term *zemindar* as an officer is applicable only to the *zemindar on the plains.* He was merely an officer whose duties were to superintend the portion of the country committed to his charge, to do justice to ryots and peasants, to furnish them with necessary advances for cultivation, and to collect the revenue payable to government. As a recompense for his trouble, he was allowed a malikhana or allowance amounting to 10 per cent. on the collections made by him. It consisted of certain allotments of land, revenue free, called the *saverum,* which were conveniently dispersed throughout the district so as to ensure his presence everywhere, and of the right to receive certain russooms or fees on the crops, and other perquisites drawn from the sayer or customs and from the quit rent on houses. Latterly a lump sum was stipulated for from him which was for one or more years. The office was not hereditary, but like all things Indian, became hereditary. It was considered impartible as a matter of administrative convenince. The *zemindar* was liable to be removed at

pleasure and punished for acts of disobedience or for failure to pay the amount due by him at the stipulated time.

Existence of other officers.

But the existence of the *zemindar* did not dispense with the ordinary revenue officers of government. Side by side with the former existed the latter in regular gradation who kept an account of cultivation and furnished the foujdar or governor of the province with accounts and statements of the past and present state of cultivation from which he settled with the zemindar the amount he was to pay. As long as the central power was strong, the *zemindar* was merely an officer; and when it grew weak, he became independent of it. The anarchy that followed the death of Aurangzebe, the comparative weakness of his successors and the continual warfare which had prevailed preceding the transfer of the country to the English emboldened the *zemindar* to usurp almost independent power and their position resembled that of feudatory chiefs. It was during this period that they claimed proprietary right to the soil.

Havelly lands.

Besides the lands which were under the *zemindars*, there were other lands under the immediate possession of government known as *havelly* or *koru* lands in the Northern Sirkars. These lands consisted of the demesne or household lands of the sovereign and districts near to towns resumed by the Mahomedan government and appropriated to the peculiar support of its garrison and establishment.

Zemindar at the time of permanent settlement.

When the Northern Sirkars came under the dominion of the East India Company, they continued the system of collection of revenue through zemindars by giving them leases either for a year or for terms of three or five years. In the case of *havelly* lands they collected revenue by means of renters. At the time of the

permanent settlement, the zemindars in the Northern Sirkars comprised,—

(1) the descendants of the ancient rajas and their former revenue officers,

(2) the descendants of the revenue officers of the Moghul empire,

(3) the renters of the East India Company.

In the south and western portions of the Presidency lands were similarly held in two ways—

In the South.

(1) directly under government, known as the *sirkar*, *ayan*, or *taraf* lands, corresponding to the *havelly* or *koru* lands of the Northern Sirkars, and

(2) intermediately through a class of persons, known as the *poligars* or *palayakarans*.

Poligar or palayakaran.

The *poligars* or *palayakarans* were military chieftains of different degrees of power and consequence, and at the time of the permanent settlement, comprised three classes of persons—

(1) the descendants of the royal families of Vijianagar, Conjeevaram and Madura,

(2) the military chieftains of those sovereigns who had resisted the conquest of the Mahomedans and had retained either by force, or through indulgence or tolerance their estates which they had enjoyed under the ancient government, and

(3) district collectors who had eluded the immediate control of the Mahomedans and had gradually usurped the sovereignty of their districts; sometimes even potails or headmen who, in the anarchy of the declining Moghul empire claimed the sovereignty of the villages under their control. Thus a *palayam* often comprised only one or a few villages. Most of the *poligars* whose military services were not required by the kings of Bijapur and Golkonda were assessed at the full value of their districts. If they were police officers and

derived advantage from that position, a proportionate addition was made to their tribute; and if the profits did not defray the charge, a deduction in tribute was made.

Meaning of poligar and palayakaran.

Poligar and *pollam* are Telugu, and *palayakaran* and *palayam* are Tamil, and both have the same meaning. *Palayam* literally means a camp. *Palayakaran* primarily means the holder of a camp, and secondarily the holder of an estate on military tenure. He was always to consider his district not as a *nadu* or country, but as a *palayam* or camp, and had three obligations to perform (*a*) to preserve the king's peace within the *palayapat*, (*b*) to maintain and furnish whenever necessary a fixed number of troops to serve with the king's army, and (*c*) to pay a tribute every year to the king's treasury.

Judicially defined.

The Privy Council accepting the definition given in Wilson's Glossary described a *palayam* as a tract of country subject to a petty chieftain, and a *poligar* as a petty chieftain occupying usually tracts of hills or forests, subject to pay tribute and service to the ruling power, but seldom paying either; and more or less independent, but as having at present, since the subjugation of the country by the East India Company, developed into peaceful landholders.[1]

Permanent settlement.

The permanent settlement in India is intimately connected with the name of that high-minded nobleman and statesman, the *Marquis of Cornwallis*. By the term permanent settlement is meant the settlement in perpetuity of the government demand with an intermediate class of persons, known as the *zemindar*, *poligar*, *mittadar* or *proprietor* in pursuance of the policy inaugurated by him. The introduction of the permanent settlement has been subsequently the subject of rancorous debates and bitter controversies. On the one hand it has been

1. *Naraguntу Lutchmeedavamah* v. *Vengama Naidu*, 9 M.I.A. 66.

said that the zemindars were mere tax-collectors paying to the state amounts fluctuating and unequal, and that the augmentation of revenue derived from extended cultivation has been sacrificed to the prejudice of the state. On the other hand they have been described as hereditary landlords having hereditary claims to the lands under their charge. Both assertions are partially correct and partially wrong. Some of the zemindars were the representatives of those who were ruling princes and who exercised all the powers of rulers. They commanded armies, made wars on their own account, and concluded treaties. They had their own coins even. Some of them were the descendants of the ancient Hindu sovereigns; others were chieftains under rulers exercising various degrees of authority; and some others consisted of mere revenue officials, military commanders or police officers who in the anarchy of the declining empire had usurped other functions; and a few others were headmen who similarly usurped.[1]

Causes of permanent settlement.

The causes of the permanent settlement are not to be found in a single circumstance, but in a variety of circumstances operating at the same time. Political and financial considerations had not a little to do with it.

(1) The spirit of the age. It was at about this time that land tax in England was made permanent as regards land.

(2) The course of events in England even before the advent of Lord Cornwallis tended in the same direction.

(3) The financial necessities of the East India Company at the time were such that it wanted an assured income not fluctuating with the season.

(4) After the fall of the Moghul empire, the country became full of governors, generals, chieftains, revenue officers

1. See the instructive judgment of *Sankaran Nair* J. in *Secretary of State* v. *Janakiramayya*, 37 Mad. 322.

and others claiming independence and asserting proprietorship over the soil. The unsettled state of the country demanded an immediate settlement with them.

(5) The desire on the part of Lord Cornwallis to create a landlord class similar to that of Europe, whose very existence should depend upon the stability of the British rule and who in case of a foreign invasion should be attached to the Company from motives of self interest.

(6) The hope entertained by Lord Cornwallis that by the making of the demand on zemindars permanent there would be no tendency on their part to oppress and rackrent their tenants, and thus the happiness of the people would be ensured.

Settlement in Bengal.

When Lord Cornwallis came to India, he brought with him instructions from the Court of Directors to conclude a settlement for ten years in the first instance, and they declared their intention to make it permanent provided it merited their approbation on experience. Soon after his arrival, he concluded a decennial settlement in Bengal to be declared permanent, if approved by the Court of Directors; and in 1793 even before the expiry of the ten years, the decennial settlement was declared permanent.

Introduction into this Presidency.

The Court of Directors desired to have that system introduced into Madras also, but the proposal did not find much favour with the local officers, except with regard to its application to the Northern Sirkars. In 1799 positive orders were sent out and on this occasion the Governor-General proclaimed his resolution to remove from office any public servant who was unwilling or incapable of carrying out the system. A Special Commission presided over by a member of government was appointed in 1802, to whom was delegated the important business of arranging the

permanent settlement of the revenue, and Regulation XXV of 1802 was passed for carrying out the purposes of the permanent settlement. The progress made by the Commission having rendered its retention unnecessary it was discontinued, and the extension of the permanent settlement to those districts in which it had not been introduced was left to the superintendence of the Board of Revenue..

Further extension prohibited.

The further extension of the permanent settlement received a check in 1806 after Lord William Bentick became Governor of Madras. In a minute recorded by him, he wrote that the creation of zemindars where none existed before was neither calculated to improve the condition of the lower classes of people nor politically wise with reference to the future security of government; and in another minute recorded, "the more I consider this important question, the stronger is my conviction that the present system is not the best that might be adopted." Opinion in England had at the same time undergone a material change. Principles which but a few years ago had met with universal assent were now called into question, and measures which had received the sanction and commendation of the Court of Directors, the Board of Control and of successive administrations and which had been eulogised by high authorities as a result of consummate wisdom and enlightened disinterestedness were now stigmatised as improvident as originating in defective knowledge and erroneous analogies and as equally detrimental to the prosperity of the state and the happiness of the people. The Court of Directors influenced by the *ryotwari* system introduced by Sir Thomas Munro wrote in 1813 that the creation of zemindaris in localities where there was none before would be unjust, ineffectual and unwise, and finally prohibited government from introducing permanent settlement any further.

Policy of the East India Company.

The policy of the East India Company at the time was to take away from the zemindars the rights which according to modern western notions could only be exercised by the sovereign power, and to leave them only such rights as could be exercised by a private proprietor. Therefore, on the establishment of the permanent settlement it was made a fundamental condition that zemindars should no longer be suffered to keep a military force; that the preservation of general order and tranquillity should thenceforth be solely vested in government and in the civil authorities to whom under its control and direction the public safety was vested. There were some claims which did not clearly fall within the scope of the one or the other and they were dealt with by name. It was necessary that there should be no doubt on the question and great care was taken to enumerate the rights which were till then exercised by the zemindars and which should no longer be exercised by them. For instance, all salt and saltpetre revenue, duties of every description by sea or land, tax on liquor and intoxicating drugs, all taxes personal and professional, all taxes, and lands for police establishments were expressly excluded from the permanent settlement. As the military services to be rendered by the poligars have been put an end to in 1801 and their police services in 1816, no poligar can claim to hold his palayam on military or police services after those dates.[1]

Who suffered under the permanent settlement.

The permanent settlement seems to have answered the expectations of its authors as regards facility in the collection of revenue. Judging the result of the permanent settlement as it was at the time, it cannot be said that the state had suffered. On the one hand it was benefited by an augmentation of revenue and on the other the settlement afforded an easy means of collection. The only persons that can be said

1. *Appayasami Naicker* v. *Midnapore Zemindary* Co., 44 Mad. 575 : 48 I.A. 100.

to have suffered under the permanent settlement were the ancient *zemindars* and *poligars*, and the ryots. Some of the zemindars and poligars had long ancestries to tell being descended from ruling princes or ancient sovereigns of the country; and some of them, though their ancestries could not bear scrutiny, had at least acquired a hereditary title to their lands and an assured position in society. Many of them were feudatory chiefs and had been exercising various degrees of authority either originally acquired or subsequently usurped within the limits of their *zemindaris* and *palayams*. Under the permanent settlement they have all been reduced to the position of mere landholders paying to government the peshkush fixed by it and retaining for themselves the remainder. The other person affected was the ryot. His rights were nowhere defined and this led to frequent disputes between zemindars and ryots. After trying various pieces of legislation, the Madras Legislature passed the *Estates Land Act* (I of 1908).

As regards newly-erected estates.

The permanent settlement, however, did not, as regards the newly created estates, prove such an unmixed blessing that it was supposed to be; and many of them could not stand the benefit conferred upon them. The peshkush fixed upon them was high, and as they were unable to pay it, they fell one after the other. When they were advertised for sale, no purchaser could be found and they were purchased by government. The permanent settlement proved well with the ancient *zemindaris*.

Confirmed in perpetuity.

Under the permanent settlement, existing zemindars and other landholders having individual claims to their estates were confirmed in their respective possessions in perpetuity. Lands in the direct possession of government were parcelled out into estates, each yielding an income from 1,000 to 10,000 pagodas and sold to highest bidders. Each of those estates was to be

formed having regard to irrigation facilities so that it was to comprise all villages watered by one tank and not detached villages; and it was then stated that wish of government was to leave the construction of tanks and watercourses entirely to the proprietor and to keep them in its own hands only when the works were of general importance to the country or too extensive to be entrusted to the charge of individual proprietors, or where from other causes it was considered advisable to keep them also. The purchasers of these estates also were confirmed in perpetuity. This led to the creation of another class of zemindars, the purchasers of those estates, who were placed in the same position as the existing zemindars.

Another class of zemindars.

The permanent assessment fixed at the time of the permanent settlement is known as the *peshkush*. On the fixing of such peshkush the zemindar is granted a sanad-i-milkiyat-i-istimrar or deed of permanent property in which the conditions and articles of the tenure are entered, and he is required to execute a corresponding kabuliat. Any dispute regarding assessment is regulated by the sanad and the kabuliat.[1]

Peshkush.

Under the instructions of the Board of Revenue, the peshkush was to be fixed at two thirds of the collections made in the estate. It was fixed not with reference to each village, but with reference to the entire zemindary, and in calculating it the income derived from private lands was to be included. In, however, calculating the peshkush one uniform mode was not adopted throughout the Presidency.[2] In some parts two-thirds of the assets were fixed with reference to detailed accounts. In Ganjam it was fixed at the discretion of the Board of Revenue with reference to the accounts before them. The Guntur Sirkar was assessed with

How fixed.

1. Sec. 3, Reg. XXV of 1802.

2. See the judgments of *Sankaran Nair* J., in *Secretary of State v. Janakiramayya*, 37 Mad. 322; *Wallis* C.J., in *Secretary of State v. Maharaja of Venkatagiri*, 31 M. L. J. 97.

reference to the average collections during the thirteen years it had remained under the British rule. In Arni a comparatively light peshkush was fixed without reference to assets. In a few cases such as Venkatagiri, Kalahasti and Karvetnagar it was simply an equivalent for the military services rendered without reference to assets. Ramnad and Sivaganga zemindaris were assessed on the repórts of Mr. Lushington which yielded an augmentation of revenue to the extent of 50 per cent. on the peshkush before collected; and those in Tinnevelly at two-thirds of the gross collections affording an increase of 55 per cent. Some particular estates were assessed at increasing rates of assessment which were to become fixed after a number of years, known as the *russeed* assessment. In Chingleput it was based on the gross collections on the rents of Mr. Place.

Exclusive of certain items.

The peshkush was exclusive of the revenue derivable from "the several heads of salt and saltpetre—of the sayar or duties by sea or land—of the abkari or tax on the sale of spirituous liquors and intoxicating drugs—of the excise on articles of consumption—of all taxes personal and professional, as well those derived from markets, fairs or bazars—of lakhiraj lands (or lands exempt from the payment of public revenue) and of all other lands paying only favourable quit-rents," as regards which government "reserved to itself the entire exercise of its discretion in continuing or abolishing, temporarily or permanently the articles of revenue included according to the custom and practice of the country" under them. No land is to be considered as being held on condition of performing police duties unless expressly mentioned in the sanad, and such lands are to be disposed of in any manner government thinks fit.

Lakhiraj lands.

Lakhiraj (*lit*, without tribute) lands are lands exempt from the payment of the public revenue. They mean lands capable of paying revenue but granted away rent free or at favourable rents. They

consist of (1) lands granted on condition of rendering public service, *e g.*, village service *inams*; (2) *sarvadumbala inams*, and (3) *inams* granted on favourable quit rents. The sanad granted to the Maharaja of Venkatagiri at the time of the permanent settlement contained no reservation as regards *lakhiraj* lands in favour of government and the permanent assessment on the zemindary was fixed upon a basis quite different from that provided in Section 4. The government in an attempt to resume inams situated within the zemindary contended that the non-reservation of *lakhiraj* lands in favour of government was opposed to the provisions of Section 4 and *ultra vires*. The Privy Council held that both the sanad and the assessment were outside Section 4 of Regulation XXV of 1802 and that it had *no right of resumption.*[1]

Peshkush permanent.

The peshkush thus fixed is permanent and unalterable. The zemindar cannot ask for remission on *account of drought, inundation or other calamities of the season, nor can* government demand more. But when certain items included in the assets are abolished by the authority of government and the zemindar is asked not to collect them, the peshkush is decreased to that extent; so also, when the cost of the village establishment has been included in the assets and the zemindar is asked not to maintain it at the time of its revision; conversely when it has been deducted from the peshkush, it is similarly enhanced to a like extent.

Only represents land revenue.

The peshkush is only with reference to land revenue proper and does not relieve the zemindar of liability from payment of local cesses. The permanency of assessment is only as regards any additional income derived by the zemindar from his estate as the result of the fruits of his improvement and does not exempt him from liability to any future general scheme of property taxation. *The income derived by the holder of a permanently settled*

1. *Secretary of State v. Maharaja of Venkatagiri*, 44 Mad. 864: 48 I A. 415, affirming 31 M.L.J. 97.

estate is liable to income-tax, subject to the exemptions contained in the Income-Tax Act, and incomes derived from the following sources are liable to income-tax, not being agricultural incomes :—(1) jalkar, (2) ground rent from land used for potteries, (3) ground rent derived from land used as brickfield, (4) fees received from the tying up of boats against the assessee's land, (5) fees derived from land used for storing purchase of crops, (6) fees derived from cart stands, (7) *nazar* paid by tenants of agricultural holdings at the beginning of the zemindari year, (8) *nazar* for petitions presented to the zemindars dealing with questions of succession, settlement and partition, (9) ground rent for permanent shops at hats and bazaars and (10) stall fees paid by temporary (daily) sellers at hats and bazaars.[1] So also the income derived from the lease of the right to fish in tanks and connected supply channels the water in which is used for agricultural purposes.[2]

No right of escheat.

The zemindar cannot claim the right to take by escheat as the principles of the English feudal law do not apply to him ; nor can he maintain cattle pounds and levy fines on trespassing cattle after the passing of the Cattle Trespass Act.

Effect of permanent settlement.

The effect of the permanent settlement has been to convert the precarious tenure held by the zemindar into a permanent one and to give him a right to hold his estate for ever on a fixed peshkush with hereditability and transferability. He has a title to all the lands lying within the geographical limits of his zemindary, and the mere fact that certain property was not taken into consideration in fixing the peshkush does not prevent it from passing under the grant.[3] Though this is the presumption between the zemindar and government, it does not apply between the zemindar and another not a party to the permanent settlement.[4]

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1. *Probhat Chandra Barua* v. *Emperor*, 58 Cal. 430 : 57 I.A. 228.
2. *Commissioner of Income-Tax* v. *Sevuga Pandia Thevar*, 63 M.L.J. 634.
3. *Prasada Rao* v. *Secretary of State*, 40 Mad. 886 : 44 I.A. 166.
4. *Subba Rao* v. *Rajah of Pittapur*, 53 M.L.J. 400.

Waste lands.

Waste lands in the estate have been conveyed to the zemindar free of any additional assessment, with such encouragement to him to improve his estate to the utmost of his means as is held out by the limitation of the public demand for ever.

Porambokes.

The zemindar is entitled to all the porambokes within the limits of the zemindary. The right of ryots over tanks and tank beds therein extends only to grazing, cutting fuel and fishing which grant or custom may give them.

Minerals.

Where the title of a zemindar to a village as part of his zemindary is established, he is presumed to be the owner of the sub-soil rights, and a claimant to such rights claiming under the zemindar or by a grant emanating from him must prove the express inclusion of such rights.[1] The right of the zemindar to sub-soil rights is recognised by government and in the Standing Orders of the Board of Revenue it is declared that no claim to minerals is to be made on behalf of the state in estates held on sanads of permanent settlement.[2]

Liability to maintain tanks.

The duty of maintaining the existing tanks and of constructing new ones, which was formerly undertaken by the Government of India has devolved on the zemindar with whom permanent settlement has been made. He has, therefore, no power to do away with the tanks, in the maintenance of which large numbers of people are interested, but is charged with the duty of preserving and maintaining them.[3] But where the old system of irrigation is rendered unnecessary by new irrigation facilities and the zemindar is in a position to give the ryots

1. *Raja of Pittapur* v. *Secretary of State*, 52 Mad. 538 : 56 I.A. 223.

2. S.O. 25. 1. (a).

2. *Madras Railway Company* v. *Zemindar of Karvetnagar*, 1 I.A. 364 affirming *Madras Railway Company* v. *Zemindar of Karvetnagar*, 5 M.H.C.R. 139.

their accustomed supply of water from the new sources and no damage has resulted therefrom, the *zemindar* is under no obligation to maintain the old system.[1] His rights and liabilities are analogous to those of a person or a corporation on whom statutory powers have been conferred or statutory duties imposed.[2]

Power of disposition.

Section 8 of Regulation XXV of 1802 gives power to zemindars to alienate by gift, sale or otherwise the whole or a portion of their *zemindaris* without the consent of government and enacts that, unless such transfers are recorded in the office of the collector, they are of no legal force or effect, nor do they exempt the alienated portion from being proceeded against for the entire revenue. The earlier Madras cases took the view that any alienation which was not registered in the office of the collector was not binding either on the grantor or his successor. But the Privy Council has pointed out that the restriction on alienation is only imposed to secure the interests of revenue, and that a zemindar has no right to disturb an alienation made by his predecessor, if otherwise valid.[3]

Alienation of a portion.

If a portion of the *zemindary* is alienated, its liability for payment of revenue due on the entire *zemindary* remains, unless it has been separately registered in the office of the collector. For the purpose of such separate registration, procedure is laid down in Section 9 of Regulation XXV of 1802, Section 2 of Regulation XXVI of 1802 and Act I of 1876. Regulations XXV and XXVI of 1802 apply to cases of court sales, and Act I of 1876 to private alienations.

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1. *Samayan Servai* v. *Kadir Moidin*, 51 I. C. 899.
2. *Madras Railway Company* v. *Zemindar of Karvetnagar.* 1 I.A. 364.
3. *Venkateswara Yettiappa Naicker* v. *Alagoo Muthu Servaigaran*, 8 M.I.A. 327.

Power of holder of impartible zemindary.

Prior to the decision of the Privy Council in *Sartaj Kuari v. Deoraj Kuari*,[1] the Madras High Court held that the power of alienation of the holder of an impartible *zemindary* was similar to that of the manager of a joint Hindu family, and that any alienation in the absence of necessity would not enure beyond his life and be binding upon his successor.[2] But the Privy Council in that case reversed that view and held that in the absence of a custom to the contrary, the zemindar had full power of alienation. This decision which was given in the case of an alienation *inter vivos* was re-affirmed and extended to the case of a disposition by will.[3]

The Impartible Estates Act.

Then the Madras Legislature at the instance of the Madras Landholders' Association intervened and passed the Madras Impartible Estates Act (II of 1904) restricting the power of disposition of the holder of an impartible estate. The Act applies only to those estates mentioned in the schedule attached to it. Section 4 (1) restricts the power of the holder to alienate or bind by his debts any estate or part thereof to such circumstances as would entitle the manager of a joint Hindu family not being the father or grandfather of the other co-parceners to make an alienation of the joint family property, or incur a debt binding on the shares of their co-parceners independently of their consent. But he is authorised to grant sites for public, charitable or religious institutions, and to grant mining and quarrying leases for terms not exceeding sixty years, and leases of the pannai or home farm land for terms not exceeding fifteen years on the conditions mentioned in the Section. The Act further prohibits the proprietor from alienating

1. 10 All. 272 : 15 I.A. 51.

2. *Bhavanamma* v. *Ramaswami*, 4 Mad. 193.

3. *Venkata Surya Mahipathi Krishna Rao* v. *Court of Wards*, 22 Mad. 383 : 26 I.A. 83.

or binding by his debts the estate or part thereof beyond his lifetime for payment of land revenue unless the consent of the collector is first obtained. It is, however, expressly declared that the Act does not apply to

(1) the power of the holders to provide for the succession of the estate in default of heirs;

(2) alienations made or debts incurred before the coming into force of the Act;

(3) estates thereafter lawfully alienated otherwise than by temporary transfer.

Unsettled palayams.

Certain estates of the *palayam* class to which permanent sanads have not been granted are known as *unsettled palayams*, as the holders thereof refused to accept the offer of permanent settlement made to them by government on condition that they continued to pay the tribute which they have been paying for fifty years past. Regarding the nature of the tenure of an *unsettled palayam*, some early Madras cases took the view that the holder had only a life estate therein and that on his death it reverted to government; while the contrary view was taken in other cases. Finally in the *Marungapuri case*[1] the Privy Council held that *prima facie* an *unsettled palayam* was hereditary and observed that the only difference between a palayam or zemindary which is permanently settled and one that is not, is that in the former the government is precluded for ever from raising the revenue; and in the latter, may or may not have that power. There is now no difference between *settled* and *unsettled palayams*. The assessment is fixed in both cases and succession is governed by the same principles. The *unsettled palayams* have a demand perpetually fixed, but no permanent title.[2]

1. *Collector of Trichinopoly* v. *Lekkamani*, 1 I.A. 282; *Appayasami Naicker* v. *Midnapore Zemindary Co.*, 44 Mad. 575: 48 I.A. 100.

2. *Man of Administration*, I. 120.

Private land.

Private land of the zemindar known variously as *pannai, kammattam, sir, neez*, etc., bears a strong resemblance to the lord's domain of feudal times,[1] and its existence can be traced to early times. From these lands he drew the grain and other supplies for the domestic purposes of his household. *Saveram* lands which are certain allotments of land given revenue free as remuneration for the office of zemindar are not necessarily private lands for they often comprise lands in the occupation of other persons as to which the zemindar is only entitled to the accustomed rent.[2] The zemindar is entitled to both *warams* in private lands, and no right of occupancy exists therein. He can let them for cultivation on any terms he thinks fit,[3] and claim *swamibhogam* in addition to *melwaram*.[4]

Liability to water cess.

Water cess is now levied under the provisions of the Madras Irrigation Cess Act (VII of 1865):—

(1) when water is supplied or used for purposes of irrigation from any river, stream, channel, tank or work belonging to, or constructed by, government, and

(2) when water by direct or indirect flow or by percolation or drainage from any such sources from or through adjoining land irrigates any land under cultivation or flows into a reservoir and is thereafter used for irrigating any land under cultivation. In this case such irrigation must in the opinion of the revenue officer empowered to charge water cess, subject to the control of the Collector, the Board of Revenue and the government, be beneficial to and sufficient for the requirements of the crop on such land.

1. *Zemindar of Chellapalli* v. *Somayya*, 39 Mad. 341.
2. *Lakshmayya* v. *Varadaraja Appa Rao*, 36 Mad. 168.
3. *Bhavani Narain Rao* v. *Lakshmidevammah*, No. 2 of 1822 (Sel. Dec. I. 317); *Nagasami Kamayya Naik* v. *Yiramasami Kone*, 7 M.H.C.R. 53.
4. *Venkatagiri Zemindar* v. *Raghava*, 9 Mad. 142.

(3) Such levy should be made before the end of the revenue year succeeding that in which the irrigation takes place.

Exceptions.

Two exceptions are made in the Act to such levy,-

(*a*) no cess is to be levied in the case of a *zemindar*, inamdar or any other description of landholder when by virtue of engagements with the government he is entitled to irrigation free of separate charge, and

(*b*) no such cess is to be levied on lands held under ryotwari settlement which are classified and assessed as wet, unless they are irrigated by using without due authority water from a source which is not the recognised source of irrigation for such lands.

In an estate.

Where lands are situated in an estate, the government can make rules for the collection of the cess (1) from the landholder, (2) from the ryot, or (3) in shares from both, and the amount payable by a landholder or a ryot is a charge upon his interest in the land; but this provision does not apply where the payment of water-cess is regulated by a contract between the landholder and the ryot. Arrears of water cess can be recovered as arrears of land revenue.

Construction of the Act.

It will appear from the words of the preamble to the Act that this statutory cess is levied as a fit return for the large expenditure incurred by government in the construction and improvement of works of irrigation and drainage and on account of the increased profits derived from lands irrigated by such work; but the body of the Act makes it leviable without any reference to expenditure or increased profits. Thus the operative portion of the Act goes beyond the preamble and the cess is

leviable irrespective of the question whether any expenditure has been incurred or increased profits derived.[1]

River belonging to government.

The first condition for the levy of the cess is that water must be taken from a river, stream etc., belonging to government. There was a sharp difference of opinion in the High Court as to what was a river, stream, etc. belonging to government. In the *Urlam case*[2] the High Court held that even when the banks and bed of a stream situated in a permanently settled estate had been granted by government at the time of the permanent settlement, the water therein still remained the property of government by virtue of Section 2 of Act III of 1905 and that therefore water-cess could be levied for the use of such water. This view was dissented from in later cases. In the *Urlam case* on appeal[3] the Privy Council did not decide the question and preferred to deal with the case both on the footing that the river belonged to government and on the footing that it did not. In consequence of the difference of opinion in the High Court, the question was referred to a Full Bench of five Judges who unanimously held that the ownership of a river or stream depended upon the ownership of the banks and bed.[4] Recently the same question came up for decision before the Privy Council, and it has held that a river belongs to government when the *solum* of the stream belongs to it, which will happen when it is the proprietor of the lands abutting on the river on both sides, or when the river is tidal and navigable.[5]

Engagement.

The second condition for the levy of the cess is that it must not be contrary to any engagement with a zemindar, inamdar or other description of landholder not holding under ryotwari settlement. Engagement

1. *Prasada Rao* v. *Secretary of State*, 40 Mad. 886 : 44 I.A. 166; *Secretary of State* v. *Maharaja of Bobbili*, 43 Mad. 529 : 46 I.A. 302; *Secretary of State* v. *Subbarayudu*, 55 Mad. 268 : 59 I.A. 56.

2. *Mahalakshmamma* v. *Secretary of State*, 34 Mad. 295.

3. *Prasada Rao* v. *Secretary of State*, 40 Mad. 886; 44 I.A. 166.

4. *Chinnappan Chetty* v. *Secretary of State*, 42 Mad. 239.

5. *Secretary of State* v. *Subbarayudu*, 55 Mad. 268 : 59 I.A. 56.

need not be express, but can be implied.[1] The sanad granted to the zemindar at the time of the permanent settlement constitutes an engagement, although it makes no mention of water rights.[2] It includes a right of easement, and when water is taken by virtue of that right, no liability to pay water cess arises;[3] nor when water is taken by virtue of riparian right.[4] What is the extent of the easement? When at the time of the permanent settlement a river and the contiguous land through which passed a channel taking water from that river belonged to government, and under that settlement the contiguous land together with the channel was granted by government to a zemindar, the engagement with him must be measured by the physical conditions, such as the size of the channel, or the nature and extent of the sluices and weirs governing the amount of water that enters the channel, and not by the purposes to which the government or its tenants have been accustomed to use the water from the channel prior to the date of the grant. The zemindar can make as much use of the water as he likes up to this extent, and no water cess can be levied for cultivation in excess of the wet area existing at the time of the permanent settlement. But it will be different if only the contiguous land has been granted reserving the channel, and in such a case no right to water will pass.[6] If, however, the river does not belong to government, the right to water that passes into the channel will depend in part upon the natural rights of riparian owners, and in part on prescriptive rights existing at the date of the grant or acquired thereafter. In such a case also the government has no right to levy a cess.[7]

1. *Prasada Rao* v. *Secretary of State*, 40 Mad. 886; 44 I.A. 166; *Secretary of State* v. *Subbarayudu*, 55 Mad. 268: 59 I. A. 56.

2. *Ibid*.

3. *Secretary of State* v. *Maharaja of Bobbili*, 43 Mad. 529: 46 I.A. 302.

4. *Secretary of State* v. *Subbarayudu*, 55 Mad. 268: 59 I A. 56.

5. *Prasada Rao* v. *Secretary of State*, 40 Mad. 886: 44 I.A. 166

6. *Ibid*.

7. *Ibid*.

The same rule applies to the levy of water cess as regards whole inam villages.[1] With regard to these villages, the engagement implied in the inam settlement is the same at that implied in the permanent settlement; and so long as the measure of the easement is not enlarged, an inamdar is not liable to pay water cess for cultivation beyond the wet area at the time of the inam settlement, which may be due either to a more economical use of water or to improving the capacity of the tank and thus conserving the water which might otherwise have overflowed.[2] The effect of the two decisions of the Privy Council has been to overrule a considerable body of decisions of the High Court which held that in the case of permanently settled estates and inam villages water cess could be levied either for first or second crop cultivation in excess of the mamool recognised at the time of the permanent or inam settlement.

Inam villages.

Water cess is leviable not only when water is taken directly but also through percolation. It includes cases where the sub-soil water derived by percolation from a river or channel belonging to government is taken by the roots of trees.[3]

By percolation.

When water has once been taken to irrigate the lands, its beneficial character and sufficiency thereof are not for the civil court to decide, but are entirely left to the Collector, subject to the control of the Board of Revenue and government.[4] The action of the Collector is not a judicial, but only an executive, one, and it is not necessary for him to issue a certificate to that effect before imposing the cess.[5] But the

Jurisdiction of civil courts.

1. *Ambalavana Pandarasannadhi* v. *Secretary of State*, 40 Mad. 909 (P.C.) reversing 34 Mad. 366.

2. *Yahya Ally Saheb* v. *Secretary of State*, 53 M.L.J. 769.

3. *Secretary of State* v. *Mahadeva Sastrigal*, 40 Mad. 58.

4. *Secretary of State* v. *Swami Naratheeswar*, 34 Mad. 21; *Secretary of State* v. *Mahadeva Sastrigal*, 40 Mad. 58; *Gopala Ayyar* v. *Secretary of State*, 38 M.L.T. 205.

5. *Secretary of State* v. *Mahadeva Sastrigal*, 40 Mad. 58.

civil court has got jurisdiction to decide whether as a matter of fact a particular land was irrigated from a government source.[1] As the levy of the cess is to be made before the end of the year succeeding that in which the irrigation takes place, government has no right to charge for prior years as arrears.[2] A rule made by government that the Collector has the power to impose prohibitory rates when water is taken without permission is a delegation of the authority to prescribe the rates, which is not warranted by the Act.[3] Its right to make rules having the force of law is only with respect to the rates at which and the manner in which water-cess is to be levied, and does not extend to the decision of the question, whether there is an engagement exempting a land-holder from liability to pay water-cess, which the civil court has jurisdiction to decide.[4]

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1. *Secretary of State* v. *Mahadeva Sastrigal*. 40 Mad. 58.
2. *Ramachandra Appa Rao* v. *Secretary of State*, 35 Mad. 197.
3. *Kamulammal* v. *Secretary of State*, 8 M.L.T. 171.
4. *Ranganayakamma* v. *Secretary of State*, 28 M.L.J. 297.

CHAPTER IV.

THE RYOTWARI TENURE.

Amani system.

Before dealing with the *ryotwari tenure* and its incidents, it will be useful to have a brief description of the systems adopted for the collection of revenue before its general introduction into the Presidency. The system which was most prevalent in many parts of the Presidency from very remote times and which still survives in zemindaris is that known as the *amani*. It denotes the collection of revenue direct by government through its village servants without the intervention of farmers or zemindars, either by taking a share of the produce or by the collection of money rents. In the former case, it is known as the *asara* or *waram* (*i. e.*, sharing) system and this system is also loosely called *amani*. Under this system, the ryots were sometimes induced to take the government share of the crops at a fair valuation, either agreed upon beforehand or just before the harvest. The settlement was made with the residents of the village, and when they did not agree to the terms offered, it was rented out. *Ryotwari* system is really *amani* system as the settlement in both cases is made with individual ryots, with the difference that in the former case the settlement purports to be made on the basis of dividing the net instead of the gross produce. The word *amani* is also usually applied to lands in the immediate possession and management of revenue officers. There is no analogy or relation between the nature of *kumri* lands and *ryotwari* holdings.[1]

Appanam system.

The *appanam* system was prevalent in the districts of Bellary, Cuddapah and Kurnool. The word *appanam* means "any taxed lands, especially lands highly assessed, which are required to be held by

1. *Ambu Nayar* v. *Secretary of State*, 47 Mad. 572 : 51 I.A. 257.

cultivators, who, as an equivalent, hold other lands on favourable terms, or rent free." This system grew out of the ancient usage of the country under which patels and reddies were held responsible for keeping up the cultivation of their villages to the standard, and were thus saddled with a larger extent of highly assessed land than they would voluntarily have retained, their office being endowed with a larger extent of service inam land in consideration of their liabilities than would have been attached to it had they merely ordinary duties to perform. Under this system when the ryots relinquished their lands, the patels were bound to provide for their cultivation and were not allowed to reduce their own holdings by relinquishment.

Dittum.

Dittum means arrangement or settlement. It was also known as *amarakam*, *atukubadi*, or *vilu*. It was, in theory, an account taken by the Indian revenue servants at the commencement of the cultivation season of the lands that the ryots intended to cultivate, and what portion of the previous year's holdings they intended to give up. In practice, however, in order to make a great show on paper, it was accompanied by inducements and injunctions to take up larger extents of lands than the ryots had the means of cultivating, and the ryots used to consider themselves obliged to cultivate what was settled upon them. In some cases, however, it was an understood thing that the ryots were not to be forced to pay for all the lands they entered to pay, unless they cultivated them all. In places where joint rents existed, the *dittum* was merely an arrangement necessarily made at the beginning of each season by which the gross rent of the village for the current year was after discussion with the ryots settled.

Olungu system.

Olungu and *motafysal* systems were prevalent in the districts of Tinnevelly and Tanjore. The former was complicated. It consisted of the commutation of an assumed or estimated quantity of produce

at a fixed or standard price, modified by the current price of the day. The commutation rate was founded on the price of past years, but all increase of price of over 10 per cent. above the standard was added to the demand, while all decrease of more than 5 per cent. under the standard was remitted to the ryot. The ryots had the choice between this system and a reversion to the sharing system, if they were dissatisfied with any year's settlement. Joint liability was not a feature of either *olungu* or *motafysal* system, as the peculiar mode of granting remission under either was consistent only with individual liability. *Olungu* differed from the *ryotwari* system in that the government dues under the former varied with the current prices of grain. The advantages of the *olungu* system were that the government participated with the ryot in the benefit of high prices, while the latter was relieved from loss when prices were much depressed; and its disadvantage consisted in the difficulty that was experienced in obtaining accurate and fair returns of the current prices which were taken throughout the year. The *motafysal* system was a modification of the *olungu* system, the variations of the conversion rate according to the current price being abandoned and the standard *olungu* price adopted once for all at an unchangeable conversion rate.

Motafysal system.

The *Pat' hak* or *pathakam* system was prevalent in Tanjore during the administration of the Hindu rajas. Under this system government contracted with a middleman designated *pat' hakdar* or *pathakadar* for the revenue of a group of villages, and in some cases, for each individual village. A joint liability on the part of all the landholders was a feature of this system. This system was introduced into Tanjore by Bava Pandit, the able and faithful minister of Tulzaji, in order to revive industry and to bring under cultivation villages which had been laid waste by the invasion of Hyder. Bava united into small

Pat'hak system.

pathakams a village which had most suffered in the war with another contiguously situated which had been less exposed, by this means transferring the cattle, implements of husbandry and resources of each to their mutual relief ; a principal landholder selected by the inhabitants and approved of by the sirkar was considered as the intermediate agent of both and denominated the *pat' hakdar* or *pathakadar* from whom the sirkar received a kabuliat binding him for the cultivation of such of the lands as might be previously agreed on between him and the cultivators. This system was abolished in *fasli* 1209.

Pattukattu system.

Under the *pattukattu* system, whenever a ryot brought into cultivation any land, he could not at any time relinquish it. Closely resembling this system was the *taram bharti* system. Under this system it was endeavoured to prevent ryots from assigning their highly assessed lands and cultivating only those that were lightly assessed ; ryots who so assigned their heavily assessed lands being charged for one year the assessment of the lands so assigned on their more lightly assessed ones which were cultivated.

Taram bharti system.

Veesabuddy system.

The term *veesabuddy* is applied in the Ceded Districts and Telingana to a co-parcenery village, of which the lands or profits are allotted by sixteenths and fractions of sixteenths among the hereditary proprietors. The *veesabuddy* system is described by the Board of Revenue thus[1] : " Under this system, a fixed sum of money was assessed on the whole village for one or more years. A certain number of the most respectable ryots became answerable for this amount, each being responsible for his own separate portion thereof, and all for each other, and the lands were divided by lot, as in the samudayam villages of the Tamil country, the portion of land to be occupied by each

1. *I. Revenue Selections*, 910.

being determined by the proportion of the rent for which he became responsible. Thus, if ten ryots obtained their village for three years at a *veesabuddy* rent of one hundred pagodas, the first becoming responsible for twenty, the second for forty, and the other eight for five pagodas each, the lands of the village would be divided into ten equal shares, the first would be entitled to two of these, the second to four, and each of the others to half a share; and from this division of the lands into shares the settlement took its name of *veesabuddy*, namely, a village settlement *by shares* in ready money." When the cultivation season drew near, all the ryots of the *veesabuddy* village assembled to regulate their several rents for the year. They ascertained the agricultural stock of each individual, and of the whole body, the quantity of land to the culture of which it was adequate and they divided it accordingly giving each man a portion which he had the means of cultivating and fixing his share of the rent, and whether his share be one or two sixteenths, he paid the proportion whether the whole rent of the village be higher or lower than last year. Where this system prevailed, it was customary for the residents of the village, periodically once in five or six years, to exchange all their lands so as to secure an equal division of the soil, good and bad. Where it was for a year the ryots generally retained the same lands but the assessment on them was revised every year, the revision being made by the tenants themselves, and, to ensure its impartiality, the peculiar practice of "challenging" was introduced, whereby any ryot who considered that his own holding was overassessed, and that of his neighbour underassessed, demanded that the latter should be made over to him at an increased rate, which he named. If the ryot in possession consented to pay the enhanced rate, he could retain the land, and in that case a proportionate reduction was made in the assessment of land held by the complaining party. If the ryot in possession refused to agree to the enhanced demand, he was compelled to give up the land to the complaining party who

undertook it on the higher terms. The term *veesabuddy* was also applied where the whole land of the zemindary was either surveyed or its extent estimated, and a tax fixed on each field, according to its size, and the fertility of the soil. It was so called on account of the land measure used which was known as *veesabuddy vissum*, equal to about $1\frac{5}{8}$ cawnies. This system was in many respects similar to the *ryotwari* settlement.

Village settlement.

After the prohibition by the Court of Directors of the further extension of the permanent settlement to any other part of the Presidency, the authorities in Madras did not altogether give up that idea and were desirous of seeing it carried out in the form of *village settlements*. Under this system, known as *koshtguta*, *mustajari* or *mouzawar gaingarah*. the officers of government farmed out the lands of whole villages either to head inhabitants who again sub-rented each field and settled with each ryot, or to the community of the village who settled among themselves the land and rent which they were respectively to occupy and pay. This apportioning of rent and land was known as *amarakam*. The assessment was fixed not on each field but on the whole village, which was formed on the share of the produce belonging to government with reference to the market price of grain, or with reference to the price on the average collections for a certain number of years, and in districts where the survey rents had been completed, was regulated with reference to the payments made by ryots under such survey assessment. The two leading principles of this system were the joint and several liability of the villagers and the non-intervention of government officers when once the demand was fixed; but it seems unlikely that the joint liability was ever enforced. The settlement was made at first for a term of three years, and the Court of Directors without committing themselves one way or the other approved of it, but declared that it was not to become permanent without their previous sanction. Subsequently they ordered in 1812

that in all provinces that might be unsettled, the *ryotwari* system should be introduced, and that, where village rents on any other principle were introduced, they should be terminated at the end of the term. These instructions came, however, late, and on the termination of triennial leases, government concluded ten years' settlements. A visit by *Sir Thomas Munro* to England made up the minds of the Court of Directors, and towards the close of 1817 instructions were received for the abolition of the *village settlement* and the general introduction of the *ryotwari* system.

Ryotwari system (original).

Ryotwari or *kulwar* system was first introduced into the British possessions by *Col. Read* in 1792. When the Baramahal and Salem were ceded to the British by *Tippu*, *Lord Cornwallis* specially deputed *Col. Read* for their settlement. The prevailing system of land revenue settlement at the time was the permanent settlement, and *Col. Read* was expected to carry it out in those districts. But as the circumstances of the country were imperfectly known, without any instructions from head-quarters, he deemed it prudent to enter into temporary settlements with the actual cultivators, and this gave rise to a new system, since designated *ryotwari* or *kulwar*. The system introduced by *Col. Read* embraced the survey of every holding in the district and a field assessment based on the productive powers of the soil. These particulars were determined by the entries recorded in the village accounts, by information derived from ryots, and by the personal observation by the surveyors of the crops and stubbles on the ground. It fixed and recorded a specific sum of money as the maximum revenue payable on each field or tract of occupied land, and when the revenue was payable in kind, it commuted it into a money payment. Individual assessments were subject to modification, not only on such considerations as vicinity to roads, markets and villages, but also on account of such changing conditions as the personal strength and health of the

ryot, his caste, the amount of his stock and his general reputation for wealth or poverty. The ryot was not regarded as the proprietor of the soil but only as a cultivating tenant from whom was to be exacted by government all that he could afford. While the settlement was made with each ryot for the *lands held by him*, an element of the village system was introduced by making him liable for the entire demand on the village. This system was open to several objections. By fixing the *maximum demand payable* by the ryot, the system introduced an uncertainty in the amount payable by him, and he did not know what it was until he actually reaped the crops. As it was fixed on the footing that he was only a cultivating tenant and based on hypothetical data, it was high. Under the *old* system though the assessment was high, there were many opportunities for the ryot to evade payment of it in full, but under the new system there was none. Further the ryot was made liable for the default of those whom he even did not know and for whose introduction he was *not responsible*. The *only redeeming feature of* this settlement was that the assessment was "fixed for ever." Under the revised or the existing *ryotwari* system which is that hereafter described, these objectionable features were removed, while the assessment was declared not to be fixed.

Ryotwari system (existing).

The *ryotwari* system in force at present means the division of all arable land, whether cultivated or waste into blocks or lots, the assessment of each block at a fixed rate for a term of years, and the exaction of revenue from each occupant according to the area of land thus assessed which he occupies. That area may remain either constant, or may be varied from year to year, at the occupant's pleasure, by the relinquishment of old blocks or the occupation of new ones.[1] The distinguishing feature of this system is that the state is brought into direct contact with the owner of land and collects its revenue through its own servants

1. *Man of Administration*, I. 103, 104.

without the intervention of an intermediate agent such as the zemindar or farmer, and its object is the creation of peasant proprietors. All the income derived from extended cultivation goes to the state. *Ryotwari* lands are known as *taraf* lands in the Tanjore district, and as *ayan*, *sirkar*, *koru*. or government lands in the other parts of the Presidency.

Proposal for permanent assessment.

The intention of the founders of the ryotwari system was to make the assessment on land permanent. The same view was taken in the early proceedings of the Madras Government and the Board of Revenue; and on the 9th July, 1862, the then Secretary of State, Sir Charles Wood, sent out orders that a full, fair and equitable rent must be imposed on all lands under a temporary settlement, and that when this had been done, a permanent settlement of the revenue might be made ; and regarding the loss of prospective revenue he said that the advantages which might reasonably be expected to accrue not only to those immediately connected with the land but to the community generally were sufficiently great to justify the risk of some prospective loss of land revenue. Subsequently a change of view had come, and on the 28th March, 1883, the then Secretary of State finally ruled that the policy laid down in 1862 should be abandoned.

Settlement for thirty years.

Under the rules at present in force, settlements of revenue are made for such periods as government may fix for each district which will be notified by the Collector in the District Gazette and are ordinarily made once in thirty years. When, therefore, government makes a settlement of certain ryotwari lands for thirty years and fixes for that period the revenue payable by such lands at a certain rate, it cannot during the currency of that period charge a higher rate.[1] But where at the time of the

1. *Prasada Rao* v. *Secretary of State*, 40 Mad. 886 : 44 I.A. 166 ; *Kelu Nair* v. *Secretary of State*, 48 Mad. 586.

re-settlement for thirty years in the Chingleput district, certain *achukattu* lands, *i.e.*, lands surrounded by high ridges which in the rainy season retained sufficient water for raising a wet crop, situated close to the foreshore of a government irrigation tank were classed as dry, and charged at dry rates, and subsequently during the currency of the thirty years wet rates were charged when wet crops were raised thereon, the Privy Council held that such charge was legal as there was a conversion within the meaning of the settlement notification, though no such charge could be made in respect of lands classed as *manavari*.[1]

Hindu assessment.

According to the Hindu authorities the highest that the state can demand under ordinary circumstances is only one-sixth of the produce varying with the soil, and the labour necessary to produce it, and as much as one-fourth in times of necessity, such as of war or invasion.

Mahomedan assessment.

Under the Mahomedan government one half of the produce as land revenue was the general rule.

As understood by the English.

The oriental theory as now understood by the English government is that the produce of land which is given by nature as opposed to that which is produced as the interest of invested capital is the proper source from which to draw revenue; and that, if this be not alienated to individuals, or appropriated by them by prescription, the necessity for taxing labour or capital is obviated.

Under the ryotwari system.

Under the ryotwari system the soil itself is taxed, and assessment is fixed on the land and does not depend upon the description of produce or upon the claims of certain classes of persons to reduced rates. The classification of soils is to be as simple as possible and is to be alike everywhere instead of

1. *Secretary of State* v. *Ramanujachariar*, 51 Mad. 611 : 55 I.A. 331.

each village having its own. As a rule all lands are classed under two general heads, *wet* and *dry*, and in some districts, a third class of lands called the *manavari* has been recognised. Collectors are authorised to sanction with the consent of the pattadar during the term of the settlement transfers of ryotwari lands from *dry* to *wet* and *vice versa*, and from *manavari* to *dry* or *wet* and *vice versa*.

Wet land.

Wet land which in all ordinary seasons have an unfailing supply of water for two crops are registered as double crop, the charge for the second crop being half the first crop assessment. Remission may be given when the supply of water fails. In cases where water is raised by baling, an abatement of half-a-rupee per acre is allowed. The second crop assessment may be compounded in respect of all irrigated lands of which the supply of water is not ordinarily failing. Single crop wet land on which a second wet crop is raised is liable to a charge for water, which is ordinarily half the assessment. When, however, there is a fixed water rate for irrigation, it will be charged. No charge is made for the irrigation of a third crop. Wet land on which dry crops are raised with the aid of government water is liable to the full wet assessment; but if the dry crop so raised happens to be a second crop after the first crop has been cut, the same charge as for a similar crop raised on dry land is levied. If, however, the charge calculated at such rates happens to be more than half the assessment of the land, the latter may be charged. A dry crop raised on wet land without the aid of government water after the first crop has been cut is not liable to any charge. A deduction for baling which is either one rupee per acre or one-fourth of the water rate or assessment varying in the several districts is allowed whether for the first or second crop raised on wet land. Single crop wet lands assigned to religious institutions in lieu of tasdik allowances, if cultivated with a second crop, will be assessed with second crop assessment but such assessment will be

collected from the tenants who raised the crop and not from the assignee of the first crop assessment.

Dry lands.

No tax is imposed for a second crop on *dry* lands. Lands forming the ayakut of *doruvu* wells are classed as dry and charged with water rate at ¼ or ⅛ of the difference between the wet and dry rates of assessment according as water is raised by single or double lift, and no water rate is charged for the irrigation of second crop. Dry land which has been irrigated by water from a government source is liable to the ordinary water rate, if it has been done with permission; otherwise an enhanced water rate is levied.

Manavari land.

Manavari lands are lands upon which wet crops are grown with the aid of rain water impounded on the land by means of ridges raised round it or with the water of swamps, small ponds or the like, and in some cases, tankbed lands. They are usually assessed at special rates which are intermediate between the wet and dry rates otherwise applicable.

Ryotwari assessment.

At the time of the organisation of the Settlement Department in 1856, the Madras Government proposed in accordance with the custom of the the country to fix the land revenue at 30 per cent. of the gross produce, but the Home Government ruled that the land revenue should represent a fixed proportion of the net, and not of the gross, produce, which was eventually fixed at one-half. The settlement is accordingly based on what is known as the " half net principle." The instructions issued to the Settlement Department require that the net produce of every variety of soils should be ascertained by a large number of actual experiments, and the procedure prescribed is most elaborate. The first process is to divide the soil into certain main classes according to the mechanical composition and chemical properties of the soil dealt with; and there are

14 such classes recognised by the Settlement Department. Each class of soil is then sub-divided, some into 3 and others into 5 "sorts," with reference to their degrees of fertility as ascertained by an examination of the constituents of the surface soil and sub-soil, the total varieties of soil dealt with being 66. All lands whether irrigated or unirrigated are classed under these 66 varieties of soil. But for irrigated lands the classification is still more elaborate, because these lands are again divided into a number of groups according to the nature and efficiency of the sources of irrigation from which the lands derive their supply of water, and lands falling under each of these groups are classed under the 66 varieties of soil. The second process is to ascertain the grain outturn of the lands irrigated and unirrigated. For this purpose certain prevailing dry crops, in the case of dry lands, and paddy in the case of irrigated lands are taken as standards, and the average outturn, in term of these crops, of every variety of soil, is to be ascertained by actual harvest experiments conducted for a series of years. From the average outturn thus ascertained, a deduction of from 15 to 25 per cent. is made on account of extraordinary vicissitudes of season and barren patches unavoidably measured with fields. The third process is to find the money value of the grain outturn. For this purpose the value of grain for 20 non-famine years proceeding the settlement is ascertained, and deducting from it 8 to 20 per cent. for cartage and merchants' profits, the remainder is taken to represent the ryot's prices and adopted as the commutation rate, and the grain outturn is converted into money at this rate. The fourth process is to ascertain by actual enquiries the expenses of cultivation for each kind of soil. The difference between the money value of the grain and the cultivation expenses is taken as the net value of each kind of soil, and half of it is taken to represent the land tax. To correct inequalities arising (1) from the adoption of a single commutation rate for an entire district or other larger tract of country

comprising a number of taluqs, while the prices of grain often differ from village to village according to the facilities of communication and proximity to markets, and (2) from the adoption of the same grain values for similar soils whose fertility may be affected by local circumstances such as vicinity to the sea, rivers or hills, the villages are grouped together into separate groups, and the money rates applicable to the lands comprised in each group are raised or lowered according to circumstances. Minor differences in the value of lands due to the same causes are allowed for by modifying the classification under "sorts" in each group. Thus fair land in a good situation immediately adjoining the inhabited portion of the village would be classified in the first sort "good," while good land at a great distance would be classed as "moderate." In the case of irrigated lands their classification into "sorts" also is adjusted with reference to their facilities for irrigation owing to their proximity or otherwise to the irrigation source, and in the case of dry lands with reference to their proximity to roads and markets.[1]

Nature of assessment.

The sovereigns in India have always claimed as one of their prerogatives the right to take a share of the produce of all cultivated lands, and also to fix by executive orders that share and its commuted money payment.[2] Civil courts are prohibited from taking cognizance of suits involving the consideration or decision of any question regarding the rate of land revenue payable to government, or the amount of assessment fixed or to be hereafter fixed.[3] But they have jurisdiction to

1. *Progress*, 189 to 191 ; S. O. I. 2 ; *Man of Adminis*, I. 107—109.

2. *Bhashyam Ayyangar, J.* in *Bell* v. *Municipal Commissioners of Madras*, 25 Mad. 457 ; *Madathapu Ramayya* v. *Secretary of State*, 27 Mad. 386 ; *Secretary of State* v. *Venkatapathi Raju*, 23 M.L.J. 746 ; *Kelu Nair* v. *Secretary of State*, 48 Mad. 586.

3. Section 58, Rev. Rec. Act ; *Bhashyam Ayyangar, J.* in *Madathapu Ramayya* v. *Secretary of State*, 27 Mad. 386; *Secretary of State* v. *Venkatapathi Raju*, 23 M.L.J. 746 ; *Rama Rao* v. *Secretary of State*, (1914) M.W.N. 388 ; *Kelu Nair* v. *Secretary of State*, 48 Mad. 586.

decide whether or not the land or person is at all under liability to be assessed to land revenue.[1] According to *Bhashyam Ayyangar, J.* as the prerogative of the sovereign is to take only a share of the produce and the prohibition of the jurisdiction of civil courts extends only to the rate or share that may be fixed by government, that share cannot exceed the produce; and an assessment, therefore, which is prohibitive and manifestly in excess of what the land may produce and is professedly out of all proportion to such produce is *ultra vires* of government, and its action can be questioned in civil courts.[2] All lands are *prima facie* liable to assessment.[3] A person who claims to hold land without liability to pay assessment must show some grant exempting him from such payment, and no exemption can be claimed, unless it is expressed in clear words.[4] Can he plead prescription as a ground of exemption from such liability? The Manual of Administration published under the authority of government recognises prescription as a ground of exemption.[5] But the Madras High Court has held that, as the assessment is imposed by virtue of the prerogative of the sovereign, there is no period of limitation fixed by any law for the exercise of that right, and that, therefore, prescription as a ground of exemption cannot be pleaded.[6] These decisions were passed with reference to the right of the government to the imposition of assessment on lands exempted from such payment at the time of permanent

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1. *Sri Uppu Lakshmi Bhayamma Garu* v. *Purvis*, 2 M.H.C.R. 167; *Bhashyam Ayyangar, J.* in *Madathapu Ramayya* v. *Secretary of State*, 27 Mad. 386.

2. *Madathapu Ramayya* v. *Secretary of State*, 27 Mad. 386.

3. *Maharaj Dheeraj* v. *Government of Bengal*, 4 M.I.A. 466; *Sam* v. *Ramalinga Mudaliar*, 40 Mad. 664; *Secretary of State* v. *Trustees of Kuttalanathaswami Temple*, 52 Mad. 25.

4. *Hanumanulu* v. *Secretary of State*, 36 Mad. 373; *Secretary of State* v. *Trustees of Kuttalanathaswami Temple*, 52 Mad. 25.

5. I. 113.

6. *Boddupalli Jaganadam* v. *Secretary of State*, 27 Mad. 16; *Subramanian Chettiar* v. *Secretary of State*, 28 M.L.J. 392.

settlement under Regulation XXV of 1802. Section 4 of that Regulation expressly reserves to government "the entire exercise of its discretion in continuing or abolishing, temporarily or permanently, the articles of revenue included . . . of lakhiraj lands"..."and of all other lands paying only favourable quit-rents," and therefore until that discretion is exercised, no limitation can arise. The absence of any such reservation and the admission in the Manual of Administration should enable prescription to be pleaded as a ground of exemption in cases not covered by Regulation XXV of 1802. In cases not coming under the Regulation, when government sought to enfranchise and impose quit-rent on inam lands, it has been held that it is open to the claimant to show that he has acquired a good title by adverse possession for 60 years as against government prior to such enfranchisement.[1]

Unauthorised occupation of land.

In the case of unauthorised occupation of lands which are the property of government, it levies from the persons who so occupy what is known as "penal or prohibitory assessment or charge." The history of this assessment or charge is this: originally treating such unauthorised occupations as offences, government was prosecuting in criminal courts the occupants thereof, but in 1869 the High Court held that unauthorised occupations were not offences, and that, if such holders were to be ousted, government must apply to the civil courts. Thereupon in order to avoid this difficulty, collectors were authorised to impose prohibitory assessment with a view, not to punish the intruder, but to make him quit the land which he had unauthorisedly occupied. To effectuate this object, the assessment was not calculated on the *half net* or any other principle but was fixed sufficiently heavy to compel the immediate surrender of the land, and it was increased from year to

1. *Krishna Sastri* v. *Singaravelu Mudaliar*, 48 Mad. 570; *Gouri Kantam* v. *Ramamurthi*, 46 M.L.J. 482; *Maniappa Udayar* v. *Sabapathy Asari*, 53 M.L.J. 515.

year until such surrender, amounting in certain cases even to one hundred times the ordinary assessment. It was really intended more as a fine than an assessment strictly so called. The government was collecting this assessment as an arrear of land revenue under the provisions of Act II of 1864, and this procedure had been adopted ever since its institution in 1869. The legality of this procedure, however, was questioned in the case of *Madathapu Ramayya* v. *Secretary of State.*[1] In that case the plaintiff put up a shed and pial to his house upon land which was part of a public highway, and government imposed and collected from him a prohibitory assessment and also gave him notice that thereafter an enhanced rate would be levied. Thereupon the plaintiff brought a suit, *inter alia,* for the recovery of the amount collected from him. It was held that the theory under which land revenue in this Presidency was collected presupposed that the person from whom it was collected had an interest in the land and was recognised as a landholder by the Revenue Recovery Act, that the prohibitory assessment was levied from a person not because he was a landholder nor on the basis that he had an interest in the land, but on the footing that he was a trespasser, that, therefore, the prohibitory assessment was not an arrear of land revenue so as to attract the provisions of the Revenue Recovery Act, and that the amount collected from the plaintiff should be refunded. To counteract the effect of this decision and to legalise the existing practice, the Madras Legislature intervened and passed Act III of 1905.

Act III of 1905.

Though the immediate object of this enactment is to make the imposition of penal or prohibitory assessment legal, occasion has been taken to declare what is government property. Section 2 declares what it is. In proceeding to deal with unauthorised occupations, the collector, or subject to his control, the tahsildar or deputy

1. 27 Mad. 386; *Ankinudu* v. *Secretary of State*, 28 Mad. 312.

tahsildar is given the option of adopting any one of the following courses :—

(1) he may simply levy an assessment, in accordance with the provisions contained in sub-sections (i) and (ii) of Section 3 ;

(2) he may levy a penalty in addition to the assessment, which is to be calculated in accordance with the provisions contained in sub-sections (i) and (ii) of Section 5 ;

(3) he may, in addition to the imposition of assessment and penalty, or in addition to the imposition of assessment alone without penalty direct that any crop or other product raised on the land shall be forfeited ;[1]

(4) he may summarily evict the person in occupation.[2]

The rate or amount of the assessment declared payable cannot be questioned in a civil court.[3] Before taking action in cases (2) to (4), the Act provides for notice to be given to the person reputed to be in unauthorised occupation of the land calling upon him to show cause why he should not be proceeded against as above,[4] and eviction is to be carried out in the manner provided for by Section 6. It is declared that the assessment and penalty levied under the Act can be realised as arrears of land revenue.[5] Appeals against the levy of assessment imposed by revenue officers to higher revenue authorities are provided for by Section 10. Persons feeling themselves aggrieved by proceedings taken under the Act can apply to civil courts for redress, and limitation therefor is six months from the date of the cause of action.

1. Section 6 (1).
2. *Ibid.*
3. Section 4.
4. Section 7.
5. Section 9.

A person in possession of government land at the time of the passing of the Act and continues in possession thereafter is liable to penal assessment, but only for the period of possession subsequent to the passing of the Act.

Ryot.

The person with whom government enters into direct engagement under the *ryotwari* system is called the *ryot.* The word *ryot* is a corruption of the Arabic word, *rayut*, which literally siginifies "pasture" or "herd of cattle," and was introduced into India after the Mahomedan conquest. It was applied to subjects at large, either as being more commonly employed in the pasturing of cattle, or as being themselves cattle or sheep, and the special care of their proprietors or governors, who, by the same figure of speech, were sometimes designated by the kindred name of *raee* or shepherd.

Patta.

When a ryot is put in possession of land, he is furnished with a document called the *patta* which is liable to revision at each annual settlement, called the *jamabandi*, conducted by the collector or the divisional officer to show the lands held by a ryot and the amount he has to pay for the year. It comprises a detailed scrutiny of the village and taluk registers with the object of ascertaining whether all items of revenue, including the demand for permanently settled estates, inam villages and minor inams have been properly determined and brought to account and whether the statistics prescribed for economic and administrative purposes have been correctly compiled. According to *Sadasiva Ayyar, J.* government is under no statutory obligation to issue any patta to a ryotwari pattadar.[1] The patta is only a mere bill issued to the ryot so that all concerned may know the amount of assessment payable and the instalments by which it is payable and is not, nor does it

1. *Rama Rao v. Secretary of State*, (1914) M.W.N. 388.

purport to be a conveyance.[1] The patta forms no part of the title and it is the conveyance that gives the parties the right to claim a *patta*.[2] It is a very common feature in the Presidency that while the patta stands in one person's name, the ownership therein belongs to another, because the latter has not applied to have the patta transferred to his name. But a patta is evidence of title,[3] and of possession.[4]

Sivaijama assessment.

Sivaijama literally means extra revenue and is applied to the assessment levied on lands at the disposal of government which have been unauthorisedly occupied and cultivated by a person and which occupation is considered unobjectionable by the revenue authorities. His occupation is that of a mere trespasser and the issue of a *sivaijama* patta conveys no title to the occupier.[5] Under the Estates Land Act the effect of the issue of a *sivaijama* patta to a person is not to recognise him as a ryot but only to collect some revenue from him for his occupation within the meaning of Section 45 of that Act.[6]

Right of pattadar.

A registered pattadar may, so far as government is concerned, alienate, sublet, mortgage, sell, bequeath or otherwise dispose of the whole or any portion of his holding.[7] Section 2 of Regulation XXVI of 1802 requires the collector of each district to keep registers for registering landed property paying revenue to government, and to

1. *Freeman* v. *Fairlie*, 1 M.I.A. 305; *Secretary of State* v. *Kasturi Reddy*, 26 Mad. 268 (272) per *Bashyam Iyengar, J.*; *Muthuveera Vandayan* v. *Secretary of State*, 29 Mad. 461 (467) per *Benson, J.*; *Sampathu Rao* v. *Appaswami Naihar*, (1930) M.W.N. 385; *Donganna* v. *Jammanna*, (1931) M.W N. 508.

2. *Freeman* v. *Fairlie*, 1 M.I.A. 305; *Donganna* v. *Jammanna*, (1931) M.W.N. 508.

3. *Gunga Gobind Mandal* v. *Collector of the Twenty-four Purgunnahs*, 11 M.I.A. 345; *Donganna* v. *Jammanna*, (1931) M.W.N. 508.

4. *Adimurti* v. *Kamatchi Prasad*, (1861) 13 Sud. Dec. 35; *Mangamma* v. *Timmapaiya*, 3 M.H.C.R. 134.

5. *Rama Rao* v. *Secretary of State*, (1914) M.W.N. 388.

6. *Doraiswamy Naidu* v. *Hussain Saheb*, (1926) M.W.N. 624

7. S. O. 28 (2).

register all transfers from one proprietor to another, and Section 3 provides that transfers without such registry are not valid in the courts of adawlut and do not exempt the persons in whose names the estates stand from paying the revenue due from such lands. As early as 1831 the Sudder Court pointed out that registry by a collector could not confer a title, and that conversely want of registry could not take away title to property.[1] Therefore want of registry does not affect the validity of the sale of land as between the seller and the purchaser and an unregistered transfer is invalid only as against government. Consequently it has been held that transfers without registry in the collector's books are valid as between the parties, and are invalid only as against government for the purpose of claiming exemption from liability to revenue.[2] Therefore in the absence of such registry on an alienation, the registered pattadar is liable to be proceeded against under the Revenue Recovery Act for arrears of revenue due even on the lands alienated by him. When a pattadar makes an alienation, and it is registered in the collector's register, the transferee takes the land subject to payment of any arrears of assessment or other legal charges due on it, and subject to the same conditions and obligations as the transferor held it on.[3] The pattadar is not to be charged for any increased produce due on account of improvements made by him, but cannot claim, as of right, reduction of assessment on account of the space occupied by such improvements.[4] He is liable to pay the assessment fixed on it, whether cultivated or not, waste or fallow.[5] Section 42 of the Revenue

1. *Letter of Sudder Adawlut to Government*, (*Sloan*, 82); see also No. 2 of 1827.

2. *Mangamma* v. *Timmapaiya*, 3 M.H.C.R. 134; *Seshagiri* v. *Pichu*, 11 Mad. 452; *Narayana Raja* v. *Ramachandra Raja*, 26 Mad. 521; *Subramania Chetty* v. *Mahalingaswamy Sivan*, 33 Mad. 41.

3. S. O. 28 (2); *Kota Subbayya Gupta* v. *Secretary of State*, 35 Mad. 555.

4. S. O. 28 (4).

5. S. O. 28 (5).

Recovery Act says that a sale for arrears of revenue conveys to the purchaser the land free of all prior encumbrances.

Right of cultivation.

At the time of the introduction of ryotwari system into this Presidency, settlements were entered into with the cultivating proprietor whom the government found on the land and treated him as the proprietor thereof. The ryotwari proprietor being the owner of the soil, it was held in a series of cases that he was entitled to carry on the cultivation of his lands in any manner he chose best, and that any person who claimed a permanent or any other right in derogation of the proprietor's right must strictly establish it. On the other hand certain other cases took the view that the mere fact that ryotwari settlements were entered into with cultivating proprietors did not necessarily show that other persons claiming a right of occupancy were not on the land, and that unless the ryotwari proprietor showed that he let tenants into possession as tenants from year to year or otherwise showed his right to eject, he could not eject them. Finally the question came up for decision before the Privy Council in the case of *Sethuratnam Ayyar* v. *Venkatachalla Goundan.*[1] In that case the Privy Council held, agreeing with the first set of cases, that in localities where the ryotwari system prevailed, permanence was not a universal and integral incident of an under-ryot's holding ; and that if claimed, it must be established, which could be done by proving a custom, contract or a title, and possibly by other means ; and in a later case, the Privy Council has pointed out that the permanent right of occupancy can be claimed by a tenant by custom, or by a grant from an owner of land who has power to grant such a right, or under an Act of the Legislature.[2]

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1. 43 Mad. 567 : 47 I.A. 76 ; *Naina Pillai Marakayar* v. *Ramanathan Chettiar*, 47 Mad. 337 : 51 I.A. 83 ; *Subramania Chettiar* v. *Subramania Mudaliar*, 52 Mad. 549 : 56 I.A. 248.

2. *Naina Pillai Marakayar* v. *Ramanathan Chettiar*, 47 Mad. 337 : 51 I.A. 83.

Absolute proprietorship.

Subject to the payment of revenue, a ryotwari proprietor enjoys an absolute proprietorship over the soil and can deal with or use it in any manner he likes. But when he works mines, he is liable to pay a royalty in addition to the usual assessment for surface cultivation.

Right to trees.

The pattadar is absolutely entitled to the trees standing on the lands held by him on patta, and no claim is made on behalf of government to such trees nor to those standing on lands held as inams, or as village or town house sites. But where conditions have been expressly inserted in the patta limiting the pattadar's rights over the trees, or when land has been assigned on special patta, cowle or lease with such limiting conditions, those conditions are strictly enforced. It often happens that while land is held on patta by one person, who is called the land pattadar, trees thereon are held by another who is called the tree pattadar; and trees pattas for palmyras were a common feature in the Tinnevelly district. The interest of the tree pattadar is still an interest in land and he has more than a mere right of access to gather the fruits of the trees. He has an interest during the continuance of the patta in the tree itself and in all that is necessary for the growth of the tree including the soil on which it grows.[1] He is entitled to the usufruct of the trees without let or hindrance,[2] but he cannot cut them down. This double holding of trees was found inconvenient and a new policy was inaugurated in 1906 under which no separate pattas are issued for trees, and where such pattas exist, the tree patta should be cancelled and the tree pattadar left to make his own arrangement with the land pattadar if the two happen to be different persons. The only effect of the cancellation of

1. *Reference under the Forest Act*, 12 Mad. 203; *Theivu Pandithan* v. *Secretary of State*, 21 Mad. 433; *Sengoda Gounden* v. *Varadappan*, 36 Mad. 148.

2. *Theivu Pandithan* v. *Secretary of State*, 21 Mad. 433; *Sivanu Thevar* v. *Omaiyorubhagam*, 58 M.L.J. 427.

tree patta is that government no longer makes any demand on the tree pattadar for revenue in respect of the trees, and the mere fact that when both pattas were in existence the land pattadar was credited with whatever revenue was collected from the tree pattadar and that on cancellation of the tree patta the whole revenue was payable by the land pattadar does not amount to a grant of the trees to the land pattadar.[1] The only effect of the cancellation of the tree patta, when the two pattadars are different, is that the land pattadar in whose patta the trees have been included, while becoming liable to pay the assessment on them to government, must collect it from the tree pattadar, so that while the tree pattadar is in possession of the trees the land pattadar must either collect the revenue on the trees from the tree pattadar or buy him out.[2]

Relinquishment.

A pattadar can relinquish all or any portion of the lands in his holding provided that (1) the relinquishment is made by a written document in the prescribed form; (2) the land relinquished is accesssible; (3) the portion relinquished is not a portion of a survey field measuring less than two acres, if dry, or less than one acre, if wet, except where the portion to be relinquished has been destroyed or rendered useless by floods or other causes beyond the pattadar's control; (4) the relinquishment takes place sufficiently early in the season to enable another to commence cultivation on it. After relinquishment the land becomes the property of government which can dispose of it in any manner it chooses.

Submergence.

Mere submergence of land held on ryotwari patta does not infer a relinquishment by the holder. On the other hand if he wishes to retain his right to the submerged lands he must continue to pay year after year the assessment due to government.[3]

1. *Sengoda Goundan* v. *Varadappan*, 36 Mad. 148.

2. *Chinnappa Naidu* v. *Raju Goundan*, 53 M.L.J. 104.

3. *Maharaja of Vizianagaram* v. *Secretary of State*, 49 Mad. 249 : 53 I.A. 64.

Tenancy when determined.

A ryot is entitled to hold the land as long as he pays the revenue, and on his default to so pay, his tenancy can only be determined by processes taken under Act II of 1864. Therefore the tenure of a ryotwari pattadar can be determined only by relinquishment or by processes taken under the Revenue Recovery Act.[1]

Recovery of arrears of revenue.

Arrears of revenue due from a ryotwari pattadar are recovered under the provisions of the Revenue Recovery Act (II of 1864). An arrear of revenue accrues when the whole or any portion of the revenue is not paid on the date it falls due according to the kistbandi or other engagement, and when no particular day is fixed, according to the time when the payment falls due according to local usage,[2] and bears interest at six per cent. per annum.[3] Section 52 declares that all arrears of revenue other than land revenue due to government, all advances made by government for cultivation or other purposes connected with the revenue, and all fees or other dues payable by any person to or on behalf of village servants employed in revenue or police duties and all cesses lawfully imposed upon land may be recovered as arrears of land revenue under the provisions of the Revenue Recovery Act, unless the recovery thereof has been specially otherwise provided for.

When can proceeding be taken.

Two conditions must exist to give jurisdiction for proceedings to be taken under the Act—

(1) there must be an arrear actually due from the defaulter,

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1. *Sankaran Nambudri* v. *Muhamod*, 28 Mad. 505; *Dongānna* v. *Jammanna*, (1931) M.W.N. 508.

2. *Sections* 3, 4.

3. *Section* 7.

(2) the land for the arrears due thereon proceedings are taken must have been included in the holding of the defaulter.[1]

Three modes of recovery.

There are three modes by which arrears of revenue may be recovered —

(1) by distraint and sale of the moveable property of the defaulter.

(2) by attachment and sale of the immoveable property of the defaulter. The collector may at the time of attaching the property or at any time during such attachment assume management of the property attached and continue in management until the arrears are liquidated,

(3) by arrest of the defaulter.

In proceedings taken under the Act.

The following must be noticed in connection with the proceedings under the Act:—

(1) Defaulter is the person in whose name the patta or registry stands in the collector's books.[2] But such registry must have been lawfully made by the revenue authorities. Where, therefore, on the death of the plaintiff's father, the revenue authorities registered his mother as pattadar and not the plaintiff, any proceedings taken against the former will not bind the latter.[3] But where the patta stands in the name of *A* and he has conveyed the land to *B* and the latter has not transferred the registry to his name, proceedings taken against *A* will bind *B*.

(2) A sale for arrears of revenue conveys to the purchaser the land free of all incumbrances.[4]

1. *Venkata* v. *Chengadu*. 12 Mad. 168; *Naga Reddy* v. *Venkataramiah*, (1918) M.W.N. 224.

2. *Subramania Chetty* v. *Mahalingaswamy Sivan*, 33 Mad. 41.

3. *Swaminatha Aiyar* v. *Govinda Padayachi*, 41 Mad. 733.

4. *Section* 42; *Kelan* v. *Manikum*, 11 Mad. 330; *Secretary of State* v. *Sankarayya*, 34 Mad. 493; *Govinda Malavarayan* v. *Velu*, (1920) M.W.N. 701; *Panchanatha Ayyar* v. *Swaminatha Ayyar*, (1930) M.W.N. 993.

(3) Each and every field included in a ryotwari patta is liable for the whole assessment due under it, though for convenience sake separate amounts are entered as the revenue demand due upon separate numbers under a single patta.[1]

(4) Within 30 days from the date of a revenue sale, any person claiming any interest in the property sold can apply to have it set aside on depositing in the taluk treasury (*a*) a sum equal to five per centum of the purchase money and (*b*) a sum equal to the amount of arrears, interest and incidental charges.

(5) Any person deeming himself aggrieved by any proceedings taken under the Act may institute a suit for redress within six months from the date of the cause of action.

(6) All engagements entered into by the defaulter with his tenants are binding upon the collector during attachment, but all such engagements made collusively with a view to defeat or delay the effect of the attachment, and all leases of land at a rate lower than the usual rates of assessment, and not made *bona fide* for the purpose of erecting factories or buildings, or of bringing waste lands into cultivation, and all engagements made subsequently to the attachment are not binding upon the collector if he so declares ; and all payments on account of rent or profits actually due made before public notice of assumption of management to or on behalf of the defaulter are binding upon the collector.

(7) All contracts entered into by the defaulter with his tenants and all payments made to him by them are binding on the purchaser at the revenue sale to the same extent and in the same circumstances as in (6) *supra*.

Rights and liabilities of government.

It is one of the most important functions of government in India to construct new works of irrigation and to repair old ones according to means and circumstances. It has at all times assumed itself, and has the right, in the

1. *Secretary of State* v. *Narayanan*, 8 Mad. 130.

interests of the public to regulate the distribution of water, subject to the right of a ryotwari landholder to whom water has been supplied, to continue to receive such supply as is sufficient for his accustomed requirements.[1] It has been held that this right can be exercised even in those portions of natural rivers passing through proprietary estates, as its exercise does not depend on the ownership of the bed of the stream,[2] but this can be doubted.[3] But this right does not include a right to flood a man's land because, in the opinion of government, the erection of a work which has this effect is desirable in connection with the general distribution of water for the public benefit[4]; nor does it extend to disturb existing arrangements to the prejudice of any ryot[5]; nor does it enable government to commit trespass.[6] It cannot enter the lands of a mittadar against his wishes, and erect there such works or make such repairs as may be necessary to ensure a proper distribution of water between the mittadar and its own ryots.[7] The position of government in regard to liability for damages caused to individuals by such irrigation works has been compared by the Privy Council in *Madras Railway Company* v. *Zemindar of Karvetnagar*[8] to that of persons acting under statutory powers. It is not bound to repair irrigation works whenever they require repair, and a ryotwari landholder has no right to damages against government in respect of loss incurred by him owing to failure of water caused by such non-repair.[9]

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1. *Ponnuswami Thewar* v. *Collector of Madura*, 5 M.H.C.R. 6; *Krishnayyan* v. *Venkatachala Mudaly*, 7 M.H.C.R. 60; *Sankaravadivelu Pillai* v. *Secretary of State*, 28 Mad. 72.
2. *Fischer* v. *Secretary of State*, 32 Mad. 141.
3. *Secretary of State* v. *Janakiramayya*, 37 Mad. 322; *Sankaran Nair*, *J*; *Chinnappan Chetty* v. *Secretary of State*, 42 Mad. 239.
4. *Sankaravadivelu Pillai* v. *Secretary of State*, 28 Mad. 72.
5. *Ramachandra* v. *Narayanasami*, 16 Mad. 333.
6. *Secretary of State* v. *Palaniappa Pillai*, (1917) M.W.N. 571.
7. *Ibid.*
8. 1 I.A. 364.
9. *Secretary of State* v. *Muthuveeran Reddi*, 34 Mad. 82.

Ryot's right to water.

The ryot has no right that water should be supplied to him through a particular source, and government has the right to alter the sources, means, works, etc., from or by which water for irrigation is supplied to the ryot entitled thereto, so long as his right to water is not prejudicially affected so as to cause real damage.[1] A ryotwari proprietor whose source of water supply is interfered with by another is entitled to an injunction restraining him from such interference.[2]

Darkhast grants.

Darkhast literally means application, and *darkhast* grants are grants made by government on the application of ryots of lands at its disposal consisting of waste lands, assessed and unassessed, and of lands relinquished or abandoned by ryots. The mode of disposal of the various classes of lands, the officers who are authorised to grant them, the classes of lands which each can grant and the procedure to be adopted by them in such disposal are all regulated by the rules contained in Standing Order 15 of the Board of Revenue, which are rules framed in the first instance by it and sanctioned by government. The powers of the various classes of officers who are authorised to act under the *darkhast* rules vary with their position and the importance or character of the lands. The officers who are authorised to act under them either in the first instance, or on appeal made to them are really agents appointed in that behalf by government, and the acts of these officers within the scope of their authority are binding upon government as if they were made by the Governor in Council himself.

Change in standing order.

In view of the decisions which held that the appellate or revisional authority had no power to interfere with grants made by subordinate officers in the absence of an express provision to that effect in the *darkhast* rules, an additional rule 14-B (present

1. *Basavanna Gowd* v. *Narayana Reddy*, 54 Mad. 793.
2. *Ibid.*

rule 17) was made in 1908. Rule 17 provides that if at any time within three years of the original or appellate decision the divisional officer or the collector is satisfied both that the decision was passed, either (1) under a mistake of fact, or (2) owing to fraud and misrepresentation, or (3) in excess of the limits of authority possessed by the officer passing it, *and* that the interests of government or of the public are affected thereby, the divisional officer if the decision was that of the tahsildar, or the collector, if it was that of the divisional officer, may set aside, cancel or in any way modify the decision. The Board of Revenue is also given power without any limit of time to set aside, cancel or amend any decision in a darkhast case on being satisfied that the decision exceeded the powers conveyed by the Standing Orders to the person making the order or that it was passed under a mistake of fact or owing to misrepresentation or fraud.

Non-observance of formalities.

Failure to observe the formalities prescribed by the *darkhast* rules does not invalidate grants made by officers competent to make them. With regard to irregularities in procedure in the case of *darkhast* grants, another new provision has been made in the Standing Orders under which the Board of Revenue is given power to set them aside when, on the motion of the collector, it is satisfied that there has been an irregularity in the procedure and that the interests of government or of the public are affected thereby.[1]

New provision.

Jurisdiction of Civil Courts.

Civil Courts have jurisdiction to take cognizance of orders passed by Revenue Officers under *darkhast* rules, and it is not taken away merely because the grant is alleged to have been made under those rules.[2] Civil Courts have, however, to concern themselves only with those rules which define the officers

1. S. O. 15, R. 17.
2. *Secretary of State* v. *Kasturi Reddi*, 26 Mad. 268 (273, 286)

competent to make such assignments of land, the extent of their authority including the description of lands which the said officers may dispose of under the *darkhast* rules, and the degree of control by a higher grade officer to whom the exercise of such authority is subject.[1] But they have no jurisdiction to set aside grants made by an officer competent to make them on the ground that the formalities prescribed by the *darkhast* rules have not been followed;[2] nor could they compel revenue authorities to make settlement with a particular person on the ground that he is entitled to preference under the rules.[3]

Redemption of land tax. Absolute freeholds.

As land tax is the main constituent of public revenue in India, it is not allowed to be redeemed universally on payment of a lump sum, but is only allowed in the case of lands occupied for building purposes or intended for gardens or plantations, of lands on the Nilgiris and the Pulney and Shevaroy hills, and of the coffee lands in the Wynaad. In these cases proprietors are allowed to redeem their land tax, the rate of redemption being twenty-five times the sum annually paid on the land as assessment or quit rent. The cost of survey and demarcation is borne by the person who redeems the assessment. On payment of the redemption money in full, with the cost of survey and demarcation, the party redeeming the assessment is furnished with a title deed in a certain prescribed form. Applications for the redemption of revenue are disposed of by Collectors, subject to an appeal to the Board of Revenue. The tenure thus created is known as an absolute freehold. It is absolute only against that demand of government which represents the government share of the produce and gives no immunity from

1. *Bhashyam Ayyangar, J.* in *Secretary of State* v. *Kasturi Reddi*, 26 Mad. 268 (277).

2. *Secretary of State* v. *Kasturi Reddi*, 26 Mad. 268 (277).

3. *Subbaraya* v. *Krishnappa*, 12 Mad. 422; *Secretary of State* v. *Kasturi Reddi*, 26 Mad. 268.

other government demands. Its holder has got the right of alienation, and his lands are liable to attachment and sale under the Revenue Recovery Act. The redemption in no way affects sub-tenures, right of occupancy or other similiar rights ; and the freedom conferred is absolute only as against government.[1]

Cowles.

Lands are granted on *cowles* under an agreement by which they are handed over for a certain period without any payment, and thereafter on payment of a diminished assessment for another period gradually rising to full assessment. When the period is finished, the holder becomes a *ryotwari* proprietor, and not before. The *cowle* tenure is usually granted to induce cultivators to break up unpromising waste lands. The difference between this and the ryotwari tenure is that in the former the contract provides for re-entry in case the conditions of the contract are not fulfilled, and no such right is claimed in the latter.

Cantonment or military tenure.

Some localities have been acquired by the military authorities for military purposes, and the localities thus acquired are formed into cantonments which are governed by the Cantonments Act and the regulations framed thereunder. Before a cantonment is formed, in order to avoid the inconvenience and risk of having absolute owners of land within it, arrangements are usually made with them for giving up their rights of occupancy on payment of compensation. Therefore mere possession of land in a cantonment does not afford any presumption that the occupier is owner in fee.[2] The same presumption applies even if he proves possession before the cantonment was formed, as he would have been compensated for

1. *Man of Adminis.* I. 118, 119.

2. *Aderji Ghaswala* v. *Secretary of State*, 36 Bom. 1 : 38 I. A. 204 ; *Raghubar Dayal* v. *Secretary of State*, 46 All. 427 ; *The Secretary, Cantonment Committee, Barrackpore* v. *Satish Chandra Sen*, 58 Cal. 858 : 57 I.A. 339.

loss of his occupancy right at the time.[1] So long the cantonment subsists, the proprietary right to the lands therein is vested in the Crown,[2] and even after the necessity for a cantonment has ceased and the lands have been transferred to the civil authorities, the same presumption applies, unless some other title by grant, prescription or otherwise is shown.[3]

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1. *Aderji Ghaswala* v. *Secretary of State*, 36 Bom. 1 : 38 I.A. 204; *Raghubar Dayal* v. *Secretary of State*, 46 All. 427; *The Secretary, Cantonment Committee, Barrackpore* v. *Satish Chandra Sen*, 58 Cal. 858 : 57 I.A. 339.

2. *Ibid*; *Patterson* v. *Secretary of State*, 3 All. 669; *Secretary of State* v. *Jagan Persad*, 6 All. 148; *Upper Bank of India* v. *Secretary of State*, 33 All. 229.

3. *Ibid.*

CHAPTER V.

BENEFICIAL TENURES.

Existence of beneficial tenures.

The existence of beneficial tenures originally known by the Sanskrit name, *manyams*, and latterly by the Arabic term, *inams* after the Mahomedan conquest, can be traced to a very remote antiquity in India. It was the custom of the Hindu government to grant assignments of land, revenue free, or at low quit rents, for the payment of troops and civil officers, for the support of temples and their servants, and charitable institutions, for the maintenance of holy and learned men, or for rewards for public service.

Grants by the king and his minister.

Whenever the king made a grant of land, he was required to give a deed or *sasana* evidencing it. The Hindu law-givers specify what such deed ought to contain. In the Institutes of Vishnu,[1] it is stated "To those upon whom he has bestowed (land), he must give a document, destined for the information of a future ruler, which must be written upon a piece of (cotton) cloth, or a copper plate, and must contain the names of his (three) immediate ancestors, a declaration of the extent of the land, and an imprecation against him who should appropriate the donation to himself and should be signed with his own seal." These grants were made either by the king directly or by his minister (*sandhivigrahadhikarin*) for and by authority of the king.[2] Both kinds of grants contained similar recitals, except that the latter contained the statement at the end of the fact that the minister wrote or made the grant.[3] In conformity with the directions contained

1. Ch. III, 82; *Yajnavalkya*, Ch. I. V. 317-320 (*Mandik, Vya May. and Yajna*, 197).
2. *Burnell, South Indian Palæography*, 108.
3. *Ibid.*, 115.

in the Sanskrit law-books the grants found in South India contained the following clauses : (*a*) the donor's genealogy ; (*b*) the description of the nature of the grant, the people or person on whom it is conferred ; the objects for which it is made and its conditions and dates ; (*c*) imprecations on violators of the grant ; (*d*) attestations of witnesses where the grant is not autograph, but rarely.[1] Grants were also engraved on copper plates or slabs of stones containing similar recitals. Whole villages granted were denoted by their main boundaries ; and small extents were measured with sticks of *tuduvars* (Todas), and the grants described as of so many tadis (sticks) of *tuduvars*. They were gone over and the boundaries marked by planting *kal* (stones) and *kalli* (milk bush). Generally in the case of grants to charitable institutions a she-elephant was let loose, and as it wandered and returned home, the route traced by it was marked and the area included in the grant.

Under the Mahomedan government.

This practice of allotting lands for the above purposes was followed by the Mahomedan government with whom also it was a frequent custom to provide for its relations and to reward the higher ranks of its officers in the military and civil departments by grants of large tracts of lands under the name of *jagirs*. These *jagirs*, generally if not always, reverted to the state on the death of the grantee, unless continued under a new sanad, for the alienation in perpetuity of the rights of government in the soil was inconsistent with the established policy of the Mahomedans, from which they deviated only in the case of endowments for religious establishments, and officers of public duty, and in some rare instances, of grants to holy men, and celebrated scholars. These grants were known as *milk* grants, that is, those which gave title to the land. A bit of land was granted revenue free, or the land was already owned by the grantee and the revenue thereon was remitted.

1. *Burnell, South Indian Palæography*, 108.

Under the British government.

During the earlier period of British rule the government of the day, following the custom of the country, adopted the practice of rewarding meritorious services by grants of *jagirs.* This practice, however, gradually fell into disuse after the receipt of despatches from the *Court of Directors*, dated 2nd January 1822 and 27th May 1829, in which they expressed their opinion of the superior propriety of money pensions to grants of land on all ordinary occasions, and directed that grants of land should be restricted to special cases.[1]

Inams.

These beneficial grants are now known as *inams*, an Arabic term introduced into India after the Mahomedan conquest, the term in use before that date being *manyams.* The term *manyam* is now applied in South India to land held either at a low assessment or altogether free, in consideration of services done to the state or the community, as in the case of village service inams. The word *inam* literally means a gift: reward. In former times the distinction between a *jagir* grant and an *inam* grant was that the former was a larger political grant implying conditions of service and the latter a smaller personal grant with no condition of service. The word *inam* is a generic term applicable to all government grants as a whole,[2] but in course of time when that word alone was used without any sort of qualification or restriction, it came to denote a grant in perpetuity, not resumable.[3]

Presumption regarding inam.

Until very recently the generally prevalent view taken in a long course of decisions was that a grant by the sovereign *prima facie* conveyed to the grantee only a right to land revenue, *i.e.*, *melwaram*, and that when the right to the soil, *i.e.*, *kudiwaram*

1 *Man of Adminis*, 1, 166. *note* 1.

2. *Unide Rajaha Raja Bommarazu Bahadur* v. *Venkatadry Naidu*, 7 M.I.A. 128; *Raghojirao Saheb* v. *Lakshmanrao Saheb*, 36 Bom. 639: 39 I.A. 202.

3. *Unide Rajaha Raja Bommarazu Bahadur* v. *Venkatadry Naidu*, 7 M.I A. 128.

also was claimed, the grantee must show that it was vested in the sovereign at the time of the grant. The same presumption was held applicable to a grant made by the zemindar, whether it was made before or after the permanent settlement, as the zemindar was only an assignee of the rights of government. But the Privy Council in the case of *Suryanarayana* v. *Potanna*[1] held that no such presumption existed. It would have been satisfactory if Their Lordships of the Privy Council had expressed themselves more clearly having regard to antecedent historical facts. They begin by saying that the presumption that the sovereign was entitled only to land revenue is one which no court is entitled to make. But no sovereign in India, Hindu or Mahomedan, claimed a right to the soil of cultivated lands, and though later Hindu sovereigns influenced by the practice of Mahomedan rulers subsequently claimed a right to the soil, they limited it only to waste lands; and in localities where powerful village communities existed which claimed waste lands as well, Hindu sovereigns had to purchase before making grants of them. Their Lordships also observe that grants made by British sovereigns are subject to the right of occupancy existing at the time of grant. If they had gone further and examined how it came about, they would have found that it was but a recognition of the practice adopted by ancient rulers. And when their Lordships make the further remark that the habit of ancient sovereigns taking a share of the produce as revenue, however much it may have varied, far from showing that they have no right to the soil from which the revenue is drawn, rather confirms the contrary, and reliance is placed on Regulation XXXI of 1802 in support of their proposition, one is not sure whether their minds were not permeated by the feudal doctrine of English property law vesting in the sovereign the proprietary right to all lands within the realm. Making the assumption that the soil belongs to the sovereign, Their Lordships deduce the

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1. 41 Mad. 1012; 45 I.A. 209.

natural corollary thereto that the taking of profits from land is evidence of ownership therein. This was the very assumption made by the early British administrators to correct which Regulation IV of 1822 had to be passed and the basis of the claim advanced by the collector and negatived by the Judicial Committee in the *Marungapuri case.*[1] Apart from the general observations made by Their Lordships in *Suryanarayana* v. *Potanna*,[2] the actual decision in the case was that in the case of *inam* grants there was no presumption that land revenue alone was granted, and without expressly deciding that on the contrary the whole interest in the soil would pass, Their Lordships examined the evidence in the case and came to the conclusion that there were no tenants in existence at the time of the grant claiming a right of occupancy by custom or otherwise. In the subsequent case of *Venkata Sastrulu* v. *Sitaramudu*,[3] the Privy Council, while affirming the view taken in the previous case that in the case of *inam* grants there was no presumption that only land revenue was granted, held that each case must be decided on its own facts having regard to the terms of the grant and the circumstances attending it. These two cases were understood as deciding that in the case of *inam* grants the presumption was that the whole interest in the land, *viz.*, *melwaram* and *kudiwaram* passed to the grantee, unless the contrary was shown. A different view was, however, taken that the effect of the two Privy Council cases was that there was no presumption one way or the other. In consequence of this difference of opinion the question was referred to a Full Bench which held that the Privy Council having reversed the view hitherto held by the Court that an *inam* was *prima facie* a grant of land revenue, the reasoning on which it was arrived

1. *Collector of Trichinopoly* v. *Lakkamani*, 1 I.A. 282.
2. 41 Mad. 1012: 45 I.A. 209.
3. 43 Mad. 166: 46 I.A. 123; *Sivaprakasa Pandarasannadhi* v. *Veerama Reddy*, 45 Mad. 586: 49 I.A. 286; *Seethayya* v. *Somayajulu*, 52 Mad. 453: 56 I.A. 146.

at showed that the presumption was that an *inam* grant *prima facie* conveyed to the grantee the entire interest in the land.[1] But this view has been disapproved of by the Privy Council in the case of *Sivaprakasa Pandarasannadhi* v. *Veerama Reddi*,[2] in which Their Lordships have pointed out that in the case of an *inam* grant there is no initial presumption to start with, and that each case must be decided upon its own facts having regard to the evidence and the circumstances therein. So that an inamdar suing in ejectment must prove his title to eject. When the entire interest in land is vested in the sovereign, he may grant the whole of it to the grantee, or the right to land revenue alone to him and the right of occupancy to another,[3] but it is not to be presumed that he intended to split the entire interest into two and confer one alone on the grantee.[4]

Persons competent to grant inams.

Grants of beneficial tenures being thus alienations of the sovereign's right, whether it be to the soil itself or merely to land revenue, it follows that the sovereign alone is competent to make them. Under the native governments such right was exercised by him or by some officer authorized by him. As long as the sovereign was powerful and able to control his officers, no alienation of his right was possible without his consent or authority; but when his power grew weak, or was not felt, his sanction was either an empty formality or was not even obtained. Therefore, during the periods of anarchy which followed the overthrow of the native dynasties and continued for some time after the establishment of the Mahomedan rule in South India, and the political confusion which ensued in the latter half of the eighteenth century, the power of granting beneficial tenures for numerous miscellaneous purposes was assumed by various petty chiefs, zemindars, foujdars,

1. *Muthu Goundan* v. *Perumal Iyer*, 44 Mad. 588.
2. 45 Mad. 586 : 49 I.A. 286.
3. *Jeeyamba Bai* v. *Secretary of State*, 28 M.L.J. 687.
4. *Secretary of State* v. *Subbarayudu*, 36 Mad. 559 ; *Secretary of State* v. *Abdul Rahman Saheb*, (1928) M.W.N. 763.

poligars, and even by renters; and sometimes they were obtained through the collusion of revenue officers.

Zemindar's power to grant inams.

The permanent settlement with the zemindars having been made exclusive of alienated lands, *lakhiraj* lands as they are called, the zemindars' connection with them ceased then. Section 12 of Regulation XXV of 1802 distinctly enacts that it shall not be competent to a landholder to appropriate any part of a permanently settled estate to religious, charitable or any other purposes by which it may be intended to exempt such lands from bearing their portion of the public dues, unless the sanction of the government has been obtained, in which case the zemindar will have to pay such assessment as may be fixed by the collector on such lands.

Construction of beneficial grants.

The rules of construction governing crown grants are applicable to beneficial grants. Where the terms of the grant are plain and unambiguous, the ordinary rule of construction as between subject and subject applies also as between the crown and the subject; and in such cases, it is always a question of intention to be collected from the language used with reference to the surrounding circumstances. *Contemporanea expositio* can be resorted to in the interpretation of such grants,[1] and aid may be sought for in the surrounding circumstances, and the occasion on which, and the object for which, the grants were made. But all the considerations applicable to grants from private persons do not apply to those made by the state. Where the terms of the grant are doubtful or ambiguous, the ordinary rule as between subject and subject that a doubtful grant is to be construed in favour of the grantee does not apply, but it is construed against the grantee and beneficially to the crown, and nothing will pass to the grantee, except by

1. *Raghojirao Saheb v. Lakshmanrao Saheb*, 36 Bom. 639: 39 I.A. 202.

clear and express words,[1] and even language of general import will be taken most beneficially to the crown. This rule of construction applies also to grants made by native governments and confirmed by the British government.

Under original grants.

Where words are employed in a grant which expressly or by necessary implication indicate that government intends that, so far as it may have any ownership of the soil, that ownership shall pass to the grantee, neither government, nor any subsequent grantee from it can be permitted to say that the ownership of the soil did not pass.[2] The question whether there is in any particular case a grant of the soil or merely of land revenue becomes material in considering the applicability of the Pensions Act, and the right of the grantee to underground rights and forests. The grant of a whole village must be taken subject to the rights of the community; but when they amount to a bare easement, the inamdar has title to the soil.[3]

Under the Inam title deed.

So far we have dealt with the rights conveyed under the original grant. We now proceed to deal with the rights conveyed under the title deed granted by the Inam Commissioner at the time of the inam settlement. The effect to be given to the insertion of the words "besides poramboke" in an *inam* title deed depends on the evidence available in each case and the circumstances attending each grant.[4] The words "the *inam* is now confirmed to you, your representatives and assigns to hold and dispose of as you or they may think proper" in an inam title deed are words of limitation, and no title passes to the representative of one of the grantees who was dead at the time

1. *Secretary of State* v. *Janakiramayya*, 29 M.L J. 389; *Secretary of State* v. *Srinivasa Chariar*, 40 Mad. 268.

2. *Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai*, 1 Bom. 523.

3. *Kannayiram Pillai* v. *Virudupatti Gins, Ltd.*, 20 L.W. 185.

4. *Secretary of State* v. *Venkataratnammah*, 37 Mad. 364; *Secretary of State* v. *Raghunatha Thatha Chariar*, 38 Mad. 108; *Secretary of State* v. *Ambalavana Pandarasannadhi*, 33 M.L.J. 415.

that the title deed was executed and signed by the *inam* commissioner.[1] A jagirdar within whose limits certain hills are situated is entitled to them even though the inam title deed does not expressly convey them, and the income derivable from them and similar uncultivated porambokes was not taken into consideration at the time of the *inam* settlement.[2]

Right to minerals. Unenfranchised inams.

The holder of an *unenfranchised* inam is entitled to work the minerals thereunder without payment of any royalty, if the grant conveys expressly or by necessary implication a right thereto.[3] The burden of proving that a grant conveys a right to minerals is on the person claiming them.[4] The grant of land revenue alone will not give him such a right; nor does a grant of land made for ordinary use for purposes of cultivation convey a right to minerals in the absence of words conveying them.[5] The holder of a rent free village granted as *brahmotter* (grant in favour of Brahmans) situated within a zemindary has no right to minerals underground unless there is a grant thereof to him.[6]

Enfranchised inams.

As regards the owner of an enfranchised *inam* to whom a title deed has been issued by the Inam Commissioner, the right to minerals was conceded absolutely to him by government till the year 1905 when a qualification was added that he was entitled only if the right thereto had been expressly or by necessary implication granted by the original grant, apart from the title deed.[7] In *Secretary of State* v. *Srinivasa Chariar*[8] the question arose regarding the liability of the inamdar of an enfranchised *srotriyam* village to pay

1. *Chendramma* v. *Narasimham*, 52 M.L.J. 253, reversing *Narasimham* v. *Chandramma*, 49 M L.J. 547.
2. *Nawab Ajajudin Alli Khan* v. *Secretary of State*, 28 Mad. 69.
3. S. O. 25, Section (1) 2 (c.)
4. *Secretary of State* v. *Srinivasa Chariar*, 44 Mad. 421 (P. C.).
5. *Ibid.*
6. *Hari Narayen Singh Deo* v *Sriram Chackravarty*, 37 Cal. 723 : 37 I.A. 136. Cf. *Rajah of Pittapur* v. *Secretary of State*, 52 Mad. 538 : 56 I.A. 223.
7. S O. 25, Section (1) 2 (c).
8. 44 Mad. 421 (P.C.).

royalty on stones quarried within the limits of the village. The Privy Council held that the effect of enfranchisement was not to enlarge the scope of the original grant, and that where it was available, the right to minerals must be guided by its terms. Therefore, where a grant was made to a Brahman and its purpose was to ensure the subsistence of the grantee by the appropriation to his use of "the produce of the seasons every year," and there were no words granting minerals, the Privy Council held, reversing the decision of the High Court, that minerals were not conveyed under the grant and that the grantee was liable to pay royalty. But where the original grant is not forthcoming, inam title deeds, extracts from the *inam* register, the Regulations, Acts, and Standing Orders relating to inams, and land acquisition proceedings, if they stood alone, may well be urged as evidence of what passed under the grant.[1]

Major and minor inams.

Beneficial grants may be of a whole village, or of a number of villages or of only certain lands therein. When a grant is made of a whole village, it is known as *dehaut* and is technically called a *major inam*; when only some lands in a village are granted, it is known as a *minor inam*; when a large block of land is granted less than a village, but much larger than an ordinary *inam*, it is called a *khandriga* or *pohal srotriyam*, which ranks as a minor inam; when a village in which there were peasant proprietors owning cultivable lands at the time of the grant is granted, it is known as a *mouje* village; and when a large section of land is granted as *inam* on which a hamlet has been built but which is not recorded in the revenue accounts separately from the village within the limits of which it is situated, it is known as *gramagarbha khandriga*. These grants are divided into two classes according to the dates of their creation, *tarapadi inam* or *manyam*. and *sanad* or *dumbala inam* or *manyam*. A *tarapadi inam* is one granted at the original formation of a village for village purposes, comprising grama

Tarapadi and Sanad inams.

1. *Secretary of State* v. *Srinivasa Chariar*, 44 Mad. 421 (P.C.).

manyams, the *inams* enjoyed by the village revenue, police and private servants and the village pagoda, and having its authority in the village register, or one inherited or held from an uncertain period as an independent right. It might have been granted either by the king or the village community, probably by the latter. This term is used in contradistinction to the *sanad* or *dumbala inam*, which is one that is held under a specific grant from the ruling power either by individuals, or by religious or charitable institutions. The *sanad* grants made by the Hindu government of Tanjore were of three kinds (1) *sikka sanads*, that is, grants in the regular form of deeds of gift. Money allowances enjoyed under *sikka sanads* were called *ayakat manyams* ; (2) *daftar rokhas*, that is, memoranda prepared in the account department of the palace stating the purport of the applications for *inam* grants, on which an order is endorsed to the effect that the application is granted ; (3) *arz rokhas*, that is, applications themselves endorsed as above. A peculiar form of *inam* called *gramabhagam* was found in the Tanjore district. It was really compensation paid to the mirasidars for waste lands in the village granted in *inam* by government.

Various kinds of grants.

These grants may vary according to the degree of benefit intended to be conferred on the grantee. They may be (1) of the whole revenue or, (2) of a portion thereof or, (3) of land subject to a payment in money. The first class of grants is known as *sarva inam*, *sarvamanyam*, or *sarva dumbala* or *darobust inam* which means that the lands are held free of all assessment; sometimes it is known as *ekabhogam inam* or *agraharam*. This kind of *inam* was granted generally in favour of religious and charitable institutions, or in favour of learned and pious persons, or in favour of decayed noble families. While originally *srotriyam* grants could apply only to grants made to Brahmans skilled in the Sruti or Vedas, though in latter times they were applied to

Sarva inam.

grants made to other classses of persons as well, *sarva inam* could be conferred on any person and under any circumstances. Generally they were made both of the revenue and of the land, and if the grantee was already in possession of the land, the revenue thereon was remitted in his favour. As these grants conveyed a right to the soil, that is, the right of the occupants also, it is said that they could be created only by the joint act of the crown and the occupant. Therefore, whenever a *sarvamanyam* grant of lands which were not waste or at the disposal of government was made, the right of the occupant was purchased and made over to the grantee, and if this was not done at the time of the grant, provision was made in the deed for such purchase. Strictly speaking, if the right to the soil did not pass by this kind of grant, it was not known as *sarvamanyam* but only as *ardhamanyam*. It conveyed to the granteee a full power of disposition over the property with power to sell, transfer, and otherwise deal with it in any manner he chose. The creation of *sarvamanyam* by the subject is an encroachment on the right of the sovereign, and whenever it was done, the sanction of the sovereign was obtained and the fact recited in the deed.

The second class comprises,

Ardhamanyam.

(*a*) *Ardhamanyam*, lands held half rent free. The term is also used to denote a grant of lands held partly rent free, and to a grant of government share to one who does not own the right to the soil.

Chaturbhagam.

(*b*) *Chaturbhagam*, known also as *patikabadi*, inam consisting of one-fourth share of government revenue. Wilson defines it as "the fourth part of the annual crop received by government from the holders of certain alientated lands. According to the definition of the term as applied in the Tamil provinces, it is a grant or alienation of government fourth in favour of the holder of the land."

Muppatika-badi.

(c) *Muppatika-badi*, lands held at three-fourths of the usual assessment.

Rayayat Mukhasa.

(d) *Rayayat mukhasa*, mukhasa villages held on a favourable assessment fluctuating with the cultivation of each year.

Tribhagam.

(e) *Tribhagam*, inam consisting of one-third share of government produce. Wilson defines it as "a third of the annual crop payable to government."

The third class comprises lands held subject to the payment of a light quit rent or *jodi*, called also *bediga*, *poruppu*[1], *kattubadi* when they are known *jodi*, etc. villages, the benefit which the grantee derives being the difference between the full assessment and the favourable assessment imposed on them. It comprises,

Bilmakta inam.

(a) *Bilmakta inam*, lands held at a fixed rent below the usual standard.

Hungami jodi.

(b) *Hungami jodi*, inam fluctuating from year to year according to the produce or extent of cultivation.

Kattukuttagai.

(c) *Kattukuttagai*, lands held at a fixed money rent less than the full assessment.

This kind of grant was also made in return for military services.[2]

Kayam jodi : har sal-makta.

(d) *Kayam jodi*: *har-sal-makta*, inam held on a fixed quit rent, not subject to variation with reference to the cultivation or produce.

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1. Poruppu is quit rent subsequently levied on inams originally granted revenue free.

2. *Venkateswara Yetiappa Naiker* v. *Alagoo Moottoo Servaigaran*, 8 M.I.A. 327.

(*e*) *Rokkakuttagai* or *money rented villages*, villages held

Rokkakuttagai.

on a fixed money payment, the amount of which is somewhat lower than the standard of assessment on government lands but higher than the jodi and the favourable tenure consists in the fixity of the tenure, They resemble the *srotriyam* in that they are held on a fixed favourable assessment, but while the latter are grants on professedly low rents, the *rokkakuttagai* consists simply in a small allotment of government dues made to the holders of certain villages.

Lands are sometimes held on payment of rent in grain, known as,

(*a*) *Nelkuttagai* or *grain rented villages*, which are

Nelkuttagai.

villages on inam tenure charged with a fixed payment in grain below the full assessment, the grain rent being paid in money at the average current selling price of the year.

Patam land.

(*b*) *Patam lands*, wet lands which pay a low assessment in grain.

Sometimes grants have no localities at all, such as,

(*a*) *Anna* or *hissa srotriyam*, inam villages in which

Anna srotriyam.

the interest of the inamdar is so many annas or shares out of each rupee of revenue, the rest going to government.

(*b*) *Dittam*, a deduction of a fixed extent from the

Dittam.

annual cultivation of the village, the proportionate revenue demand of which is paid to the inamdar without being brought to account.

(*c*) *Ivumanyam*, a grant of a proportion or percentage

Ivumanyam.

on any branch of land revenue which fluctuates with the improvement or deterioration of the produce.

Warariyayat.

(*d*) *Warariyayat*, a class of beneficial tenures resulting from the abatement of a portion of the sirkar demand. They differ from the *putam* in that the remission allowed is a defined proportion of either the gross produce or the full assessment.

Chekbundi inams.

In contradistinction to these inams having no localities, are *chekbundi inams* having defined boundaries.

Dakala and Ghair dakala inams.

Inams were classified into *dakala* inams and *ghair dakala* inams; the former being those which were entered in any particular register; and the latter those which were not so entered.

Personal and service grants.

Another classification is made according to the objects and purposes for which they were granted. It is made into (*a*) *personal grants* and (*b*) *service grants.*

Dufter gardens.

Grants were also made for special purposes, which were known as (1) *dufter gardens* and (2) *tope inams. Dufter gardens* were inam gardens entered in the early *dufters* or records in the district of South Arcot and enjoyed as private property without being subject to the ordinary lapse rules. *Tope inams* were lands consisting

Tope inams.

of a grove of trees that bear fruit and granted to encourage the plantation of trees. The grant may be of the income derivable from the trees (the tax on them), or of the tax due on the land on which they stand. In the former case the grant will cease when the trees cease to exist and government will then be entitled to treat the land as altogether free from any claim on the part of the grantee, and as having become ryotwari, subject to the payment of land revenue; and in the latter case the grantee will be entitled to the melwaram or land revenue, even if the trees cease to exist.[1] Where the inam is of a tope consisting of

1. *Jagannatha Pandiajiar* v. *Muthiah Pillai*, 14 M.L.J. 477.

trees, the inamdar has a right to the trees and can recover their value when they are cut by the tenant.[1]

Asal minaha gardens.

Similar to the tope inams which occur in the other parts of the Presidency are the *asal minaha* gardens which occur to a considerable extent in the Godavari delta. The term *asal minaha* literally means deduction from the total revenue entered on the credit side of the account with government. The land was deducted from the cultivable area which paid revenue to the state, but the term does not convey the idea of an inam which confers on the holder the right of using the land as he pleases. The tenure of *asal minaha* gardens differed little from that of tope inams, and their plantation was encouraged by former governments by the exemption of land from assessment. The preservation of the trees was a necessary condition of the exemption of land from assessment, but the condition was scarcely enforced. *Asal minaha* gardens occupied no longer with trees resemble ordinary inams enjoyed revenue free. The term has therefore been used to denote revenue free and other favourably granted lands, and also unoccupied and unassessed lands.

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1. *Rama Ayyangar* v. *Jagannatha Pandiajiar*, 38 Mad. 155.

CHAPTER VI.

PERSONAL GRANTS.

Origin of personal grants.

Personal grants are those made for the support or subsistence of the grantee and took the shape of an assignment of land or land revenue, as this was the mode of conferring benefit adopted in ancient days. They were granted in favour of pious and learned Brahmans, officers of state as a means of support in their old age, and persons unable to earn their livelihood, such as cripples, etc. Though the king was entitled to collect a share of the produce of all cultivated lands, he was enjoined not to take any tax from Brahmans learned in the Vedas. *Manu* said, " A king even though dying *with want*, must not receive any tax from a *Brahman* learned in the Vedas, nor suffer such a Brahman, residing in his territories to be afflicted with hunger"[1]; " The king, having ascertained his knowledge of scripture and good morals, must allot him a suitable maintenance, and protect him on all sides, as a father protects his own son "[2]; and *Vishnu* also said, " Let him not levy any tax upon Brahmans "[3]. It is very interesting to note the reason for the exemption of a certain class of persons. According to *Manu*, " By the religious duty, which such a Brahman performs each day, under the full protection of the sovereign, the life, wealth, and dominions of his protector shall be greatly increased "[4], and *Vishnu* puts it more clearly, " For they pay taxes to him in the shape of their pious acts " [5]. The greatest Hindu lawgiver favoured not every Brahman, but only one learned in the Vedas, and the king is especially enjoined to ascertain his knowledge of the scriptures.

1. *Manu*, Ch. VII, v. 133.
2. *Manu*, Ch. VII, v. 135.
3. *Institutes*, Ch. III, v. 26.
4. *Manu*, Ch. VII, v. 136.
5. *Institutes*, Ch. III, v. 27.

Hereditary grants.

Hereditary personal grants are grants made for the subsistence of the grantee and his heirs, and may either be of land or land revenue; and as the object of these grants was to make a permanent provision for the grantee and his heirs, they were usually made of land; and grants of land revenue alone was generally made when they were for a life or a number of lives. Originally these grants were revenue free, and the reservation of a portion of the revenue was made only subsequently, the amount of which depending upon the degree of benefit intended to be conferred on the grantee.

Implied conditions.

Though the grants were hereditary, certain conditions were implied in the nature of the tenure. They are thus stated by *Bhashyam Ayyangar, J.* in *Gunnaiyan* v. *Kamakshi Ayyar*[1]:—"According to the theory of the common law of the land applicable to hereditary grants of public revenue as inam in favour of individuals and to the interpretation of such crown grants, succession, in such cases, is, or at any rate is supposed to be, limited to the undivided brothers and to the direct lineal heirs, including a daughter's son, of the last incumbent, as also his widow and failing them, to the direct lineal heirs of the original grantee. And under that law, it is or it is supposed to be, competent for government to resume personal inams, when the reversion falls in,—in the language of the Revenue Department—when the inam lapses either by the expiration of the lives for which the inam was granted or by reason of the extinction of direct lineal heirs of the body of the original grantee or of a forfeiture incurred by alienation to a stranger. The question as to whether the crown has such prerogative reversionary right in the case of hereditary personal inams has never been subjected to the test of a judicial decision, for the simple reason that claims in respect of personal inams which

Prerogative reversionary right of the crown.

1. 26 Mad. 339.

have not been enfranchised, are exempt from the cognizance of civil courts and can be adjudicated upon only by the Governor-in-Council or other executive authority." The same restrictions are set out in Standing Order 57 of the Board of Revenue. Alienation includes mortgage, but a mortgaged inam is not to be resumed without giving the mortgagor a reasonable opportunity of redeeming the mortgage; and adoption, except out of the family of an undivided brother or cousin, is not recognised. The above observations of *Bhashyam Ayyangar, J.* were made with reference to a grant of land revenue (in that case, karnam service inam) and have no application to a personal grant of land. As long ago as 1865 it was held by *Holloway and Innes, JJ.* that the sale of an unenfranchised personal inam was valid.[1] The effect of the Standing Order prohibiting alienation of personal grants has been considered by the High Court, and it has been held that it only shows the tenure on which such grants are held, namely, that they are liable to resumption on alienation, but that it does not render the alienation void. Therefore an unenfranchised personal (bhattavritti) inam granted hereditarily for the maintenance of the grantee and his heirs can be attached and sold in execution of a decree against the holder for the time being;[2] and a suit for partition between the members of a family holding an unenfranchised personal inam lies at the instance of the widow of a deceased member claiming under a will executed by him.[3]

Grants for lives.

In the case of inams granted for two or more lives the following is the rule made by government for their computation: The generation succeeding the first life will be considered the second life, and the following generation will be considered to be the third life. For instance, *A* is the original grantee of an inam for three lives: the survivor of his sons *C, D, E*, who are an undivided

1. *Visappa* v. *Ramajogi*, 2 M H.C.R. 341.
2. *Venkataramier* v. *Chandrasekhara Ayyar*, 44 Mad. 632.
3. *Vaithyanadha Ayyar* v. *Yogambal Ammal*, 50 Mad. 441.

family, will be the second life; and the longest surviving son of either *C, D*, or *E* will be considered the third life. It is provided, of course, in these cases that the family continues undivided in each generation. If a sub-division of the property should take place in the second generation, the share of any member of the family in that generation who dies without issue will lapse.[1]

Inam settlement.

At the time of the inam settlement an option was given to the holders of the above grants to convert their restricted tenure into freeholds on their agreeing to pay a quit-rent, the rate of which varied with reference to the value and prospect of the reversionary claim of government; while no option was given to those who derived title through adoption, or alienation by gift, purchase or otherwise. In the case of such of those of the former class as refused to accept the terms offered by government, the grants were merely "confirmed" according to their actual tenure, and were subject to all the restrictions implied in the tenure.

Brahmadayam.

Personal grants, when made in favour of Brahmans went by the generic name, *brahmadayam* which means grants held by Brahmans for their personal benefit, generally free of assessment, though services, almost nominal, were reserved; and *bhattavritti* means an assignment of land or land revenue granted to Brahmans at a low rent or rent free for their subsistence.

Bhattavritti.

Agraharam.

In some cases whole villages were given, such as *agraharams*, literally meaning villages of which the revenue is appropriated before it reaches the treasury. An *agraharam* grant is a grant of a village or part thereof made to a community of Brahmans, held either revenue-free under special grants, or at a reduced rate of assessment. While *srotriyam* was granted only to particular

1. S. O. 57 (2).

families, *agraharam* was granted to a community of Brahmans who might be of different families. It is usually held in *swastiem* or shares, and the holder thereof enjoyed from ancient times the power of selling, mortgaging or otherwise disposing of it. Any restriction on alienation in an absolute *agraharam* grant is inoperative as being a condition repugnant to the nature of the grant.[1] An *agraharam* grant is made at a single rent, so that all the agraharamdars are jointly and severally liable for it,[2] and the mere fact that they hold separately their shares under distinct pattas does not necessarily negative their joint liability.[3] Where the heirs of the original sharers are in possession, they are jointly and severally liable for the entire rent; and they cannot evade this joint liability by division among themselves without the grantor's consent.[4] But when one of the sharers sells away his share and the vendee is in separate possession and enjoyment of the share purchased by him by effecting a physical division, he will be liable only for the rent due on his shares[5]. But if he is in joint possession as tenant-in-common with the other sharers, even if such possession is through tenants, he will be liable for the entire rent which he could always avoid by division of his share.[6] The mere non-payment of rent is no ground for resumption.[7] The conditions as to rent are usually denoted by the term prefixed to such grant, *viz.*, (1) *bil makta agraharam*: an *agraharam* held at a fixed quit

1. *Anantha Tirtha Chariar* v. *Nagamuthu Ambalagaran*, 4 Mad. 200.

2. *Ellaiya* v. *Collector of Salem*, 3 M.H.C.R. 59, affirmed in *Brett* v. *Ellaiya*, 13 M.I.A. 104; *Zemindar of Ramnad* v. *Ramamany Ammal*, 2 Mad. 234.

3. *Brett* v. *Ellaiya*, 13 M.I.A. 104.

4. *Venkatasubramaniam* v. *Rajah of Venkatagiri*, 11 L.W. 523; *Mosafkanni Rowther* v. *Doraiswami*, 54 M.L.J. 30; *Sampath Ayyangar* v. *Raja of Venkatagiri*, 33 L.W. 284.

5. *Mosafkanni Rowther* v. *Doraiswami*, 54 M.L.J. 30; *Suryanarayana* v. *Venkataramayya*, 56 M.L.J. 273.

6. *Mosafkanni Rowther* v. *Doraiswami*, 54 M.L.J. 30.

7. *Unide Rajaha Raja Bommarauze Bahadur* v. *Venkatadry Naidu*, 7 M. I. A. 128; *Ellaiya* v. *Collector of Salem*, 3 M.H.C.R. 59; affirmed in 13 M.I.A. 104.

rent or revenue assessed at a rate below the usual standard; (2) *kattubadi* or *jodi agraharam*: a village assessed at a quit rent; (3) *putla kattubadi agraharam*: a village held subject to a quit rent payable at a certain rate per putti of produce; (4) *sarva agraharam*: a village held free of all tax; (5) *trishwaikam*: a village in which one-third part of the produce is given for rent.

Dharmasanam.

Dharmasanam resembles an *agraharam*. It was granted in favour of Brahmans for their subsistence on payment of a fixed favourable rent and held by them in shares. It was also made at an entire rent.[1] Most of the villages are held by the grantees on *pannai*, the tenants having no right of occupancy therein; and in some villages a portion of the lands are held on *pannai* and the rest are held by ryots with occupancy rights. *Dharmasanam* lands are considered transferable property.

Poruppu village land.

Poruppu village lands are found in the Madura District. They are lands comprised in villages granted to Brahmans, which had been granted originally rent-free and subject to no kind of service. The imposition of poruppu or rent on them from which they were so called, was at a latter date, either because the grantees voluntarily subjected themselves to its levy to secure government protection and quiet possession in disturbed times, or more probably, they were compelled to pay it whenever the Mahomedan conquerors found that the title under which they held them was defective, the poruppu varying with the amount of nuzzer paid.

Srotriyam.

Srotriyam means literally an assignment of land or land revenue to a *Srotriya* or Brahman learned in the Vedas; but latterly the term was applied generally to similar assignments to the servants of government, civil and military, Hindu and Mahomedan, as

1. *Zemindar of Ramnad* v. *Ramamany Ammal*, 2 Mad. 234.

rewards for past services. The term is also used to denote the revenue or amount payable to the inamdar. A *srotriyam* grant may be either of land or land revenue; and the statement of Mr. Wilson in his Glossary that a *srotriyam* grant gives no right over the lands and the grantee cannot interfere with the occupants as long as they pay the established rent is based upon decisions which since his time have been questioned.[1] It is liable to resumption and forfeiture on failure to pay the stipulated rent; and though the grant may be expressed to the grantee and his heirs, each of them takes only a life estate and cannot alienate it beyond his life.[2] This view is open to doubt.[3]

Kairati.

Kairati is a term applied originally to inams held for personal benefit by Mahomedans, and latterly to those held by persons other than Brahmans.

Inam Altamgha.

Inam altamgha is " a royal grant under the seal of some of the former native princes of Hindustan, and recognized by the British Government as conferring a title to rent-free land in perpetuity, hereditary and transferable. Although probably originally bearing a red or purple stamp, the colour of the imperial seal or signature became in Indian practice indifferent." In the view of *Sir Thomas Munro*, such grants were resumable and no sanctity was attached to them,[4] and the contention of the East India Company in *East India Company* v. *Syed Ally*[5] was to the same effect; but *Westropp, C. J.* in *Krishnarav Ganesh* v. *Rangrav*[6] has pointed out that the East India Company treated the grant there as one in *jagir* and not in *altamgha* and

1. *Seethayya* v. *Somayajulu*, 52 Mad. 453: 56 I.A. 146, on app. from *Somayajulu* v. *Seethayya*, 46 Mad. 92.
2. *Sundaramurthi Mudali* v. *Vallinayakki Ammal*, 1 M.H.C.R. 465.
3. *Visappa* v. *Ramajogi*, 2 M.H.C.R. 341: *Venkataramier* v. *Chandrasekhara Iyer*, 44 Mad. 632.
4. *Minutes*, 151.
5. 7 M.I.A. 555.
6. 4 Bom. H.C.R. (A. C. J.) 1 (15)

that it admitted that *altamgha inams* were not resumable. The Privy Council has held that *altamgha* grants are grants in perpetuity, not resumable.[1] They are partible[2], and alienable.[3]

Jagir.

The institution of the *jagir* was essentially a Mahomedan one.[4] The term *jagir* literally means place taken,[5] and was applied to a grant in which the grantee took the place of the ruler and intercepted the *khiraj* before it reached the public treasury. It was, properly speaking, an order upon the *khiraj* of particular lands which were said to be granted by way of *jagir*. It was granted for various purposes. When a tract of country was distant from head-quarters and difficult to manage, the state appointed a *jagirdar* who would collect and appropriate the revenue, and in return keep the country in order and maintain a body of troops for local or other service. It was usually granted for military service, and being one of the purposes for which the *khiraj* is applicable, it was strictly conformable to Mahomedan law. It was also granted as remuneration for officers employed in the civil, revenue or police departments of the state. It was also similarly granted as a means of subsistence to conquered chiefs and princes, as pin money, or means of support to the relations of the emperor; and sometimes for restoration of lands not under cultivation.

Jagirdar's power.

The administrative authority of the *jagirdar* varied with the purposes of the grant and the history of the connection between the intermediary and the lands which were the subject of it. The authority

1. *Unide Rajaha Raja Bommarauze Bahadur* v. *Venkatadry Naidu*, 7 M.I.A. 128; *Krishnarav Ganesh* v. *Rangrav*, 4 Bom. H.C.R. (A.C.J.) 1.

2. *Krishnarav Ganesh* v. *Rangrav*, 4 Bom. H.C.R. (A.C.J.) 1 (6).

3. *Ibid.*

4. See *Sam* v. *Ramulinga Mudaliar*, 40 Mad. 664; *Ramasami Goundan* v. *Tirupati Goundan*, 50 Mad. 10; *Ramalinga Mudaliar* v. *Ramaswamy Aiyar*, (1929) M.W.N. 239.

5. *Baillie, Land Tax*, XLIII, 79.

would be greatest where the beneficiary was the representative of a depressed or conquered line of rajas, or of old hereditary officials who had been governors and deputies in times long gone by; or where the weakness of the central power and the general turbulence of the country made a strong man assert his independence.

Jagir and zemindary.

The *jagir* grant may be compared with another kind of grant of Mahomedan times, the *zemindary* grant, and one is the converse of the other. In both cases an individual was interposed between the sovereign and the actual cultivator. If the middleman was a zemindar, he had to pay over to the state the amount of the land revenue, less his own remuneration for collecting it, which might be assigned to him in land or in money. If he was a *jagirdar* and had been granted only the right to receive a specified sum of money, it was the right to receive that amount of land revenue that constituted his revenue; but where a district had been assigned to him subject only to liability to tribute, he collected the whole revenue of the district out of which he paid the tribute and the remainder constituted his emolument. In both cases he might have, and usually had, services to perform. Both the *zemindar* and the *jagirdar* were, in some cases, the representatives of the ancient sovereigns of the country, and their administrative authority varied with their origin. A counterpart of the *jagir* is to be found in the grant of the *mir* by the Czar under which the grantee received an assignment of taxes payable to the Czar by one or more villages or *mirs*. Such a grant originally conferred no right whatever to the land of the *mir*. It was merely a grant of the right to collect and appropriate the government share. The *jagir* may also be compared to the grant of the *benefice*. A grant of land in *jagir* imports an occupancy in the soil, subject to the rights of third parties.[1]

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1. *Sakina Bai* v. *Fatima Begum*, (1918) M.W.N. 384 (P.C.).

Conditional and unconditional Jagirs.

A *jagir* was either conditional or unconditional. A conditional *jagir* was one granted to meet the expenses of some office, public or private, or some specified duty, and was held so long as the office or duty subsisted. An unconditional *jagir* was one granted independently of any office for the maintenance and dignity of its holder and a suitable number of attenders and efficient troops which the *mansabdar* was bound to have in readiness. It was liable to forfeiture on failure of the performance of the conditions on which it was granted, or on the holder incurring the displeasure of the emperor. A *jagir* is not necessarily conditional on the rendering of services and the person who asserts that it is conditional on the performance of services must prove it [1]; nor is it necessarily a grant of land revenue alone.[2]

Not hereditary.

In the Moghul empire there were no hereditary dignities, and the alienation in perpetuity of the rights of government was inconsistent with the policy of Mahomedan government. Consequently *jagirs* were granted either for stated terms or more generally, for the lifetime of their holders. Sometimes hereditary *jagirs* were granted. Whenever they were granted by the emperor, the grants generally contained an appeal to his successors to continue them. All alienations of revenue were registered in the *tun-dufter* at Delhi, and were revised at the beginning of a new reign, the grants being either confirmed or resumed at the will of the new sovereign. The *jagirs* were originally inalienable, but when the power of the emperor grew weak, *jagirs* became alienable and transferable property. The person who asserts that they are inalienable must prove it[3].

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1. *Bhaghawant Baksh Roy* v. *Sheo Pershad Sahu*, 18 C.W.N. 297.
2. *Sakini Bai* v. *Fatima Begum*. (1918) M.W.N. 384 (P.C.).
3. *Bhaghawant Baksh Roy* v. *Sheo Pershad Sahu*, 18. C.W.N. 297.

Jagir and inam.

There is practically no difference between a *jagir* and an *inam* at present. Both might be assignments of land[1], or land revenue, and might have been granted for various purposes involving military, police, or revenue duties. But the services required of a *jagirdar* are generally more of a honorific character, and in this sense a *jagir* may be considered a species of *inam*[2], and the contrary, however, does not necessarily follow.

What Jagir conveys.

A *jagir* is *prima facie* a grant for the life of the grantee, though it might be made in terms hereditary.[3] In an appeal arising from Chota Nagpur, the Privy Council has held that the words *putra poutradi* in a grant in *jagir* outside Bengal do not by themselves, in the absence of other evidence or custom, convey an estate of inheritance descendible to collaterals.[4] But a *jagir* is not necessarily a grant for life only.[5] Neither is it necessarily conditional on the rendering of services, nor is it necessarily inalienable.[6] But where the object and terms of the grant showed that the intention was to make a permanent provision for the family of the grantee, the Privy Council held that each holder took the *jagir* only for life, and that any alienation beyond his life was invalid.[7]

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1. An opinion to the contrary is expressed by *Srinivasa Ayyangar*, J. in *Sam* v. *Ramaliga Mudaliar*, 40 Mad. 664; but it has no force after the decison of the Privy Council in *Sakini Bai* v. *Fatima Begum*, (1918) M.W.N. 384; and *Suryanarayana* v. *Potanna*, 41 Mad. 1012 : 45 I.A. 209.

2. *Sam* v. *Ramalinga Mudaliar*, 40 Mad. 664; *Sundaram Ayyar* v. *Ramachandra Ayyar*, 40 Mad. 389.

3. *Krishnarav Ganesh* v. *Rangarav*, 4 Bom H. C. R. (A. C. J.) 1 (9); *Gulabdas Jugjivandas* v. *Collector of Surat*, 3 Bom. 186; 6 I.A. 54; *Dosibai* v. *Ishwardas Jugivandas*, 15 Bom 222. 18 I.A. 22

4. *Ram Narain Singh* v. *Ram Saran Lal*, 46 Cal. 683 : 46 I.A. 88.

5. *Ramchandra Mantri* v. *Venkata Rao*, 6 Bom. 598.

6. *Bhaghawant Baksh Roy* v. *Sheo Pershad Sahu*, 18 C.W.N. 297.

7. *Gulabdas Jugjivandas* v. *Collector of Surat*, 3 Bom. 186 : 6 I.A. 54.

CHAPTER VII

SERVICE GRANTS.

Origin of service grants.

Service grants came into existence on account of the custom of the country to remunerate services rendered by servants, public and private, by assignments of land or land revenue, and this system was specially adapted to a country where the revenue was payable in kind. Such assignments varied according to the nature of the services to be rendered. They were at first only for the lives of the grantees, but in course of time, became hereditary. They may be divided into four classes, (*a*) grants for private or personal services; (*b*) grants for public services; (*c*) grants in favour of village servants; and (*d*) grants for religious and charitable services.

(*a*) *Private or personal service grants* are grants by which services, private or personal, are reserved to the grantor, as distinguished from the second class in which the community or any portion of it are interested in their maintenance, such as,

Amaram.

Amaram, known also as *umbilikkai*. According to Mr. Stratton[1], it implies ease, and hence the favourable character of the tenure; while Dr. Maclean[2] defines it to mean the command of one thousand horse, and an *amaram* grant "a grant of revenue by the prince or poligar on condition of service, generally military or police."[3] The word now generally means villages granted on favourable terms to encourage cultivation. *Amaram* grants were generally held by the armed retainers of zemindars or poligars, and also by their relatives, and persons of high rank upon a more honorary tenure of service than the *kattubadis*. The *amararkars* or grantees were therefore military chiefs, while the

1. *Report* given in *Nellore Dt. M.* 265.
2. *Man. of Adminis*, III. 24, 352.
3. *Ibid.*, 24; *Wilson*, 21.

kattubadis were inferior peons subject to frequent service. When an *amaram* is held on service tenure, the *amararkar* is bound to attend the grantor on his summons, within the period he may require; and any neglect or delay in complying not satisfactorily explained is punished by dispossession from their lands or otherwise as suits the grantor's pleasure. The *amaram* holders being of a higher class are allowed to serve with such arms as they prefer. In case they from sickness minority or other causes cannot attend they must provide efficient men to serve in their room. They are entitled to batta when on attendance on the poligar, or when they are detached on any duty unconnected with the concerns of their villages; but it is understood that they are most strictly to do the police within the respective limits of each village and in case of any irregularity or theft, they are bound to answer to the complaint and to make good the amount of all stolen effects. When the holder of lands held on *amaram* dies, his son succeeds as a matter of course; and in case he happens to be a minor, the lands are cultivated by his relatives during his minority. When the holder dies without any male issue, the next male heir or relative succeeds, but in this case he must get a sanad from the poligar recognizing him in the inheritance, and where the holder dies without any male heir, the lands revert to the poligar. Sometimes villages in a decayed condition were made over under this tenure to peons in the proportion of 8 to 10 to a village, who were then considered the *mirasidars* of those villages and were jointly bound to make good the demand or rent originally stipulated, which was neverafter raised. *Wilson* and *Maclean* are of opinion that *amaram* grants are resumable when the *amararkars* fail to perform the stipulated services; but judicial decisions have gone further and held that they are resumable at the will of the grantor.[1]

1. *Unide Rajaha Raja Bommarauze Bahadur* v. *Venkatadry Naidu*, 7 M.I.A. 128; *Narasayya* v. *Venkatagiri Raja*, 23 Mad. 262; *Narasayya* v. *Raja of Venkatagiri*, 37 Mad. 1.

Bissoyee lands.

Bissoyee lands are lands held by the *bissoyess*, or chiefs in the *maliahs* in the Ganjam District.[1]

Doratnam.

Doratnams are lands granted to the Doras who hold villages for the security of the country and for preventing the incursions of Savaras and other hill tribes.

Jivitham.

Jivithams found in the Ramnad and Madura Districts are of the same nature as the *mukhasas* of the Northern Sirkars. They were granted by zemindars to their relations and dependants, sometimes for personal services, and sometimes as subsistence grants. They were also granted as rewards for meritorious services or as support to helpless poets, etc. *Poruppu* was fixed on them or not, according to the degree of benefit intended to be conferred.

Kattubadi.

Kattubadi means settlement and is used to denote lands granted by zemindars to their armed servants and personal retainers on tenure of service at a fixed, invariable and favourable rent. They were of two classes, *grama kuttubadis*, who were strictly village servants and were required to perform service throughout the year, and *jangi kattubadis*, who were called out for service only on emergent occasions. *Kattubadi* grants are resumable at the will of the grantor.[2] The obligations of *kattubadis* are similar to those of *amarams* with the difference that the former, when called out, are bound to serve either with pikes or matchlocks provided at their own expense as may be stipulated for. They are entitled to batta in the same way as the *amarams*, and in respect of inheritance, their lands descend in a similar manner. They are bound to do the *kavali* duties of the limits assigned to them and make good all thefts within those limits. It is also understood that

1. *Man of Adminis*, III. 352.

2. *Unide Rajaha Raja Bommarauze Bahadur* v. *Venkatadry Naidu*, 7 M.I.A. 128.

when the *amarams* and the *kattubadis* distinguish themselves particularly in battle, they are to be handsomely rewarded.

Mukhasa.

Mukhasa is defined by Wilson[1] thus, "A village or land assigned to an individual either rent free or at a low rent, on condition of service; or a village held *khas* by the state, the revenue being paid to the Government direct; or the share of the Government in a village, or in the revenue paid by it." It has the same meaning as a *jagir* and *jivitham*. *Mukhasa* is a well known term in the Northern Sirkars implying a tenure subject to service.[2] It took this form when it was granted to servants and military chiefs in lieu of pay; sometimes it was granted to men of high position and influence, whose tenure was of a honorary or almost nominal nature. In some cases, when it was granted to relations of zemindars, no service is specified in the grant, though it is expressed to be for service.[3] In these latter cases they partake of the nature of personal grants. *Mukhasa* can be classified according to the conditions of the grant into (1) *kattubadi mukhasa*, village or villages granted for service at a low quit-rent; (2) *rayayat mukhasa*, villages held on a favourable assessment fluctuating with the cultivation of each year; and (3) *sarva* or *darobust mukhasa*, villages granted with no condition of service.

Meaning in Tanjore, Chingleput.

In Tanjore the term *mukhasa* is used to denote the private estate of the late Raja, being made up of lands which His Highness Sarabhoji retained at the cession of the province. It is wholly exempt from the payment of revenue, save the small police fee, the water tax levied for dry cultivation

1. *Glossary*, 352.
2. *Sobhanadri Appa Rao* v. *Venkatanarasimha Appa Rao*, 26 Mad. 403, affirmed by the Privy Council in *Venkatanarsimha Appa Rao* v. *Sobhanadri Appa Rao*, 29 Mad. 52: 33 I.A. 46; *Narayanasami* v. *Thamayya*, (1930) M.W.N. 4.
3. *Cf. Vizianagaram Maharajah* v. *Sitaramarazu*, 19 Mad. 100.

converted into wet with the aid of government water, and the local cess. In the Chingleput district it denoted villages alienated by poligars and paying nothing to government; while those that were forcibly possessed by them were known as *tusrufaat*.

Kasavargam.

Kasavargam tenure is the tenure under which house sites were granted to tenants and artizans either by individual mirasidars or by village communities in consideration of the performance of services required of them. The meaning of the term is not clear. *Wilson* defines it thus, "Traders and makers of canvas sacks, residing in a village and claiming certain fees and perquisites, having a proprietary right to their houses, but not to the land on which they stand."[1] Neither in any of the cases that have come up for decision before courts, nor in the experience of any, is the incident of the tenure mentioned by *Wilson*, namely, traders and makers of canvas sacks claiming certain fees and perquisites, to be found. *Mr. Huddlestone* derives *kasavargam* from *kasa*, private and *vargam*, account, as in the case of the *warg* of South Kanara.[2] The compound means a private account and indicates that the land held on that tenure is entered in the village registers and government revenue accounts in the name of the mirasidar who granted it. The more probable derivation is from *kachcha*, as in *kachcha asami*, meaning temporary or not permanent, and *wargam*, sort, the compound meaning a sort of temporary possession, *i.e.*, the tenant having no permanent interest in the land he occupies. The tenure came into existence on account of the practice of mirasidars and village communities allowing tenants and artizans who settled in the village sites to build houses on at their own cost, and to remain in possession of them as long as they cultivated lands or performed their duties. The consideration for their being allowed the house site is the cultivation of the lands of

1. *Glossary*, 583. 2. *Mirasi Papers*, 488.

the mirasidar, or of doing services, such as artizan's work and the like to the village community or the village temple. Generally the tenant and his descendants are allowed to continue in possession of the house site as long as they cultivate the lands or perform the services. They may be ejected for failure to perform the services required of them,[1] or the mirasidar may at any time put an end to the services and recover back the land.[2] They are mere tenants at will, and no title can be acquired by them by adverse possession.[3] The *kasavargam* tenant has no proprietary right to the soil on which the house stands,[4] but is entitled to compensation for buildings standing thereon when ejected.[5] In an early case decided by *Scotland, C. J.* and *Collet, J.*, it was held that a mirasidar by reason of non-payment of rent was entitled to have the tenant's house pulled down and be replaced in possession of the land.[6]

Grants for public services.

(*b*) *Grants for public services, or purposes of public utility* are those in which the community or a portion of it are interested.[7] The most important of this class of grants are what are called *dasabandham inams*, known also as *kattu-kodige* or

1. *Calleyana Ramier* v. *Subramanian Chetty*, (1858) Sud. Dec. 145; *Athakutti* v. *Govinda*, 16 Mad. 97; *Lakshmana Padayachi* v. *Ramanathan Chettiar*, 27 Mad. 517; *Nadarsa Rowthen* v. *Amirtham*, 22 M.L.J. 1; *Saminatha Iyer* v. *Marimuthu*, 14 I.C. 689.

2. *Special Appeal No.* 108 of 1844 (*Mirasi Papers*, 586); *Calleyana Ramier* v. *Subramanian Chetty*, (1858) Sud. Dec. 145; *Appa Pillai* v. *Gopalasami Reddi*, (1860) Sud. Dec. 41; *Vennagiri Setti* v. *Peria Visvanadhaiyan*, (1861) Sud. Dec. 27; *Subraya* v. *Nataraja*, 14 Mad. 98; *Lakshmana Padayachi* v. *Ramanathan Chettiar*, 27 Mad. 517.

3. *Calleyana Ramier* v. *Subramanian Chetty*, (1858) Sud. Dec. 145; *Vennagiri Setti* v. *Peria Visvanadhaiyan*, (1861) Sud. Dec. 27.

4. *Subbaraya* v. *Nataraja*, 14 Mad. 98; *Nadarsa Rowthen*, v. *Amirtham*, 22 M.L.J. 1.

5. *Appa Pillai* v. *Gopalasami Reddy*, (1860) Sud. Dec. 41; *Blake* v. *Sundarathammal*, 22 Mad. 116; *Nadirsa Rowthen* v. *Amirtham*, 22 M.L.J. 1.

6. *Venkatarayan* v. *Kanakasabapathy*, S. A. 207 of 1868.

7. Many of the grants that were public or quasi-public before the permanent settlement ceased to be such after that date.

cheruvu manyams. The word *dasabandham* means ten in hundred, implying thereby a deduction of one-tenth of the revenue. It is a grant of land or land revenue given as compensation for the construction of a tank, well or channel; the grant, generally, if not always, carries with it the condition of keeping the work in repair. If the grant consists of land, it is called *khandam dasabandham*; and if it consists of an assignment of revenue, it is called *shamilat dasabandham.* The extent and value of the land and the amount of revenue granted varied in proportion to the capital expended on the work in question. They are liable to resumption, if the inamdars, after due notice, fail to carry out the necessary repairs to the work for the upkeep of which they were granted, and they are allowed to participate in the enhanced revenue derived from the works they maintain. *Shamilat dasabandhamdars* are allowed a share in the profit of dry land irrigated in excess of the registered area proportionate to the *shamilat* inams they enjoy, and *khandam dasabandhamdars* 25 per cent. of the water rate leviable on the extension of cultivation. Government has given up its reversionary right to resume these inams situated within permanently settled estates, even though they were in existence at the time of the permanent settlement, and has declared that the proprietors are entitled to resume them on failure of the inamdars to do their duty.

Dasabandham Inam.

(c) *Grants in favour of village servants.*

Village service grants.

It has already been pointed out in a previous Chapter that an Indian village is a corporation with the complement of servants necessary for an agricultural population who were paid by assignments of land or land revenue, or a proportion of the produce.

The assignment of land or land revenue appropriated as the emoluments of a hereditary village office is an appanage to the office and designed to be the emoluments of the office into

Interest taken by village servants.

whomsoever hands it may fall, and until it is shown that since the original appropriation it has been resumed or re-granted, it must be presumed to be attached to the office. Though usually it is enjoyed by the members of the family of the office holder and partitioned in the family partition among them, such enjoyment and partition are illegal, and the emoluments of the office do not become the property of the family. The right to the office carries with it the right to the possession of land or land revenue constituting the emoluments of the office, and the office holder recognized as such by the revenue authorities can at any time sue to recover it. An alienation of land by the office holder for the time being is not binding upon his successor. The Privy Council had recently to consider the nature of the interest taken by a hereditary holder of a village office under Regulations XXIX of 1802, II of 1806 and VI of 1831 and its conclusions were formulated as follows :—

Under the Regulations.

(1) The lands comprising the emoluments of a karnam were attached to the office held by him as such ;

(2) When the karnam for the time being was removed from office, he lost all right and title to the lands ;

(3) Although in point of fact there might be even a long continuance of the office in a particular family, the right of government and the decision of the revenue authorities to remove a karnam from office and to appoint another, were not open to question in courts of law ; and

(4) If this right of selection were exercised in favour of a stranger, there being, for example, within the range of the family (which had been accustomed to have one of its members holding the office of village accountant) no person who in the opinion of the revenue officer was suitable for the position, then the appointment went to the stranger selected and the lands with it as emoluments without any claim thereon as a family right by relatives of the former holders of the office.

Under the Acts of 1894 and 1895.

The same result has been held to flow under Acts II of 1894 and III of 1895. Eligibility for nomination to a village office whether by the proprietor under the former Act or the collector under the latter is a matter personal to the nominee clearly taking into account such things not only as sex and age but also the physical and mental capacity to discharge the office, and even of the educational qualification of the person selected, though in exercising the nomination in particular cases, it has to be exercised in favour of a suitable person who is a member of a particular family. Though this hereditary right is recognized, it constitutes only a *spes* among the persons within the area of selection of those eligible for the office.[1] In such cases also the lands forming the emoluments of the office follow the office and are impartible and do not become the property of the family of the office holder.[2]

Karnams in proprietary estates.

Section 11 of Regulation XXV of 1802 requires the land-holders with whom permanent settlement has been effected to keep up the regular and established number of karnams in the several villages in their estates.

Regulation XXIX of 1802.

Regulation XXIX of 1802 was passed the same day that Regulation XXV of 1802 was passed for the purpose of regulating the duties and appointment of karnams in permanently settled estates. Under this Regulation, the proprietor is given the power of nominating karnams,[3] and of appointing the successor when a vacancy occurs in the office, either by death or dismissal[4]; and in filling vacancies he is to appoint heirs of the preceding karnam, and in old case the incapacity of the heir is proved to the satisfaction of Judge of the zilla, to

1. *Venkata Jagganatha* v. *Veerabadrayya*, 44 Mad. 643 : 48 I.A. 244.
2. *Ibid.*
3. *Section* 3.
4. *Section* 6.

nominate any person according to his discretion.[1] The proprietors are required to deposit a list of names of the the karnams within their estates and the names of villages of which they are karnams in the court of the adalat of the zilla, head kacheri of the collector and in the principal kacheri of the zemindary or estate,[2] and are prohibited from dismissing any karnam without a sentence of a court of judicature.[3] The duties of the karnam and the penalties for their non-performance are laid down in the other sections of the Regulation.

The Proprietary Estates Village Service Act.

The *Madras Proprietary Estates Village Service Act* (*II of 1894*) was passed for the purpose of regulating the appointment, dismissal, punishment and remuneration of the following classes of village officers by whatever name they were called, namely, (1) village accountants, (2) heads of villages, (3) village watchmen or police officers, in proprietary estates as defined in Section 4 of the Act.[4] Power is given to government to extend the Act or any portion thereof to all or any of the above classes of village offices,[5] and on the extension of its provisions to the office of village accountant in any estate, Section 11 of Regulation XXV of 1802, and Regulation XXIX of 1802 cease to be in force therein.[6] The Act requires the maintenance in each estate of so many and such village officers as the district collector, subject to the orders of the Board of Revenue, may direct,[7] and every proprietor is required to prepare and submit a register containing particulars of all village officers and village servants employed in his estate and of their emoluments and duties, whenever called upon by

1. *Section 7.*
2. *Section 8.*
3. *Section 5.*
4. *Section 2.*
5. *Ibid.*
6. *Section 3.*
7. *Section 7.*

the district collector to do so, within three months from the date of such requisition.[1] Every vacancy in a village office caused by the death or resignation of its holder is to be reported by the proprietor to the revenue officer in charge of the division in which the estate is situated,[2] and the proprietor is given power to fill such vacancies, and to appoint persons to a newly created office, within six weeks from the date of such vacancy or creation, and is to send notice of the appointment made by him to the revenue divisional officer.[3] The receiver of an estate appointed by a civil court with general powers of management can exercise the powers of a proprietor under the Act.[4] In making the appointments, the proprietor is to be guided by the following rules,[5] namely, (1) no person is to be appointed who (*a*) is not of the male sex, (*b*) has not attained the age of majority, (*c*) is not physically and mentally capable of discharging the duties of the office, (*d*) has not qualified according to the educational test prescribed for the office in question by the Board of Revenue, (*e*) has been convicted by a criminal court of any offence, which, in the opinion of the revenue divisional officer or of the district collector, disqualifies him from holding the office ; and (2) the succession to hereditary offices is to devolve on a single heir according to the general custom and rule of primogeniture governing succession to impartible zemindaris in Southern India. The revenue divisional officer to whom a notice of appointment is given may disallow the appointment made by the proprietor within three months from the date of its receipt by him, if he thinks that the person appointed is disqualified, and ask the proprietor to appoint another person and the proprietor is to appoint another within six weeks after such requisition.[6] In

Appointments how made.

1. *Section* 5.
2. *Section* 8.
3. *Section* 9.
4. *Secretary of State* v. *Janardhana Rao*, 30 M.L.J. 456.
5. *Section* 10.
6. *Section* 11 (1).

cases where no notice of appointment is sent to the divisional officer within the time fixed, or where the fresh appointment made by the proprietor is again disallowed by the divisional officer, the latter himself can appoint one in accordance with the rules prescribed in section 10.[1] Against every order passed by the revenue divisional officer or the district collector, an appeal is provided for respectively to the district collector or the Board of Revenue.[2]

Procedure when the next heir is minor or disqualified

Where the next heir to a hereditary office is not qualified, the proprietor is to appoint the person next in the order of succession who is so qualified, and in the absence of any such person in the line of succession, may appoint any person duly qualified.[3] Where the next heir is a minor, the proprietor is to send his name for registration to the revenue divisional officer as the heir of the last holder, and appoint at the same time another duly qualified person to discharge the duties, until the minor on attaining majority, or within three years thereafter, is qualified under the Act, and if he dies or remains disqualified for three years after attaining majority, the vacancy is to be filled as if he were dead.[4] The effect of registration is merely to declare that the person registered is entitled on attaining majority or within three years thereafter to be appointed to the office, provided he is qualified and it does not give the registered person any right to sue for the inam lands attached to the office enfranchised in favour of another.[5]

When the holder is suspended or dismissed.

Where a hereditary village officer is dismissed or suspended, the authority dismissing or suspending may direct that, until the death or return to duty of such holder, his duties

1. *Section* 11 (2).
2. *Section* 11 (3).
3. *Section* 10 (3).
4. *Section* 13.
5. *Satyanarayana Appalarazu* v. *Narasamma*, 31 Mad. 528.

are to be performed by some person duly qualified under the Act, who is not an undivided member of the family of the dismissed or suspended officer, to be appointed by the proprietor, subject to the approval of the revenue divisional officer; and where, in such cases, the authority concerned does not give directions for the appointment of another, the proprietor may fill it as if he were dead under the provisions of the Act; and if the person suspended, removed or dismissed is permitted to return to duty, the person so appointed in the interim ceases to hold the officer.[1] The provisions of Section 11 apply also to appointments made under Sections 12 and 13.

When villages are grouped.

Where two or more villages are grouped together to form a single village or one village is divided into two or more villages, all the village offices of the villages or village so grouped, amalgamated or divided cease to exist, and new hereditary offices, if the offices they replace are hereditary are to be created, and the holders thereof selected by the proprietor from among the families of the last holders of the offices which have been abolished.[2] Where two or more village offices of one class exist, and the district collector asks the proprietor to dispense with the services of officers not required, the proprietor is to retain those whom he thinks best qualified to discharge the duties of the remaining offices.[3] If, however, he fails to make a nomination within six weeks of the creation of new offices or of the reduction in the existing ones, the power is to be exercised by the revenue officer in charge of the division.[4]

Power of fine, suspension.

A proprietor empowered by the Board of Revenue in this behalf may, after enquiry, fine any village officer to the extent of three rupees for misconduct or neglect of duty.[5] Power is

1. *Section* 14 (1).
2. *Section* 15 (1)
3. *Section* 15 (2).
4. *Section* 15 (3).
5. *Section* 16 (1)

given to the district collector and the divisional officer, of their own motion, or on complaint and after inquiry, to fine, suspend, dismiss, or remove any village officer for misconduct, or neglect of duty, or for non-residence in the village,[1] and an appeal is provided for against every such order.[2]

Other hereditary offices in estates.

The provisions of the *Hereditary Village Offices Act* (III of 1895) apply to other hereditary village offices in proprietary estates, except (1) the offices of (*a*) the village-carpenter, (*b*) the village blacksmith, (*c*) the village-barber, (*d*) the village-washerman, (*e*) the village-potter, (*f*) the village-astrologer, (*g*) the village-purohit or priest, and (2) in proprietary estates wherein Madras Regulation XXIX of 1802 remains in force, the office of village accountant.[3] The proprietor is given power to suspend, dismiss or remove any holder of the above offices except the village accountant, the head of the village, and the village watchman for misconduct, or for neglect of duty, or incapacity, or for non-residence in the village, or for any other sufficient cause.[4] The collector is also given similar power with regard to these officers in proprietary estates,[5] but is not to exercise it unless for reasons to be recorded in writing he is satisfied that the proprietor concerned has neglected to exercise in an adequate manner the powers conferred on him. In filling vacancies, the proprietor is to be guided by the following rules, namely, (1) no person is to be appointed who (*a*) is not of the male sex, (*b*) has not attained the age of majority, and (*c*) is not physically and mentally capable of discharging the duties of the office,[6] and (2) the succession to such offices is devolved in accordance with the law or custom applicable to them at

1. *Section* 16 (2).
2. *Section* 16 (3).
3. *Section* (3) 3.
4. *Section* (8).
5. *Section* (9).
6. *Section* 11 (1).

the time when the Act came into force.[1] When the next heir is not qualified as above, the proprietor is to appoint the person next in succession who is so qualified, and in the absence of any such person in the line of succession, may appoint any person who is duly qualified.[2] When the next heir is a minor, the proprietor is to register him as heir and to have the duties performed by some other person duly qualified, until the person registered as heir becomes qualified.[3] If, however, he dies during minority, or is disqualified on attaining majority, the proprietor is to appoint another person according to the provisions of the Act.[4]

Village offices in ryotwari districts.

The appointment, suspension, removal and dismissal of hereditary village officers in ryotwari districts are now governed by the *Madras Hereditary Village Offices Act* (III of 1895). Prior to the Act there was no statutory law governing their appointment, etc. Section 7 of Regulation II of 1806 (repealed by Act XII of 1876) declared that Sections 1 to 10, 13 to 16 of Regulation XXIX of 1802 did not apply to those districts not permanently settled, and enacted in addition to Sections 11, 12, 17, 18 and 19 of that Regulation, certain rules for the due discharge of the duties of karnams in districts not permanently settled. The new rules made by Regulation II of 1806 placed them under the immediate authority of the collectors, who were empowered without restriction to nominate persons to the office for the approval of the Board of Revenue, and declared a karnam so appointed liable to removal from office for incapacity, disobedience or neglect of the collector's orders, or for falsifying or mutilating accounts, or if, having abandoned the duties of his office for other pursuits, he failed to return or reassume them within one month. It is unnecessary to consider here whether

1. *Section* 11 (2).
2. *Section* 11 (3).
3. *Section* 11 (4).
4. *Ibid.*

the Regulation recognized the hereditary right of karnams or not,[1] for the Board of Revenue in their proceedings, dated 25th September 1849 recognized the hereditary right, so far as it was consistent with a capacity to discharge the duties attached to the office.

Act III of 1895.

The provisions of Act III of 1895 are applicable to the following classes of village offices, provided that emoluments have been attached thereto[2]:—

(1) Hereditary village offices existing in ryotwari villages or inam villages which for the purpose of village administration are grouped with ryotwari villages and belonging to the following six classes by whatever designation they may be locally known, namely:—

(i) village munsifs,
(ii) potels, monigars and peddakapus,
(iii) karnams,
(iv) nirgantis,
(v) vettis, totis and tandalgars,
(vi) talayaris,

(2) hereditary village offices to which the Madras Proprietary Estates' Village Service Act, 1894, is extended; (3) other hereditary village offices in proprietary estates except (i) the offices forming class (4) below and (ii) in proprietary estates wherein Madras Regulation XXIX of 1802 remains in force, the office of village accountant; (4) the hereditary offices of village artizans and village servants such as the following, namely:—

(i) village carpenter,
(ii) village blacksmith,
(iii) village barber,

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1. See on this point judgment of *Turner*, C. J., *Muthuswamy Ayyar*, J. and *Hutchins*, J., in *Venkata* v. *Rama*, 8 Mad. 249.
2. *Section* 3.

(iv) village washerman,
(v) village potter,
(vi) village astrologer,
(vii) village purohit or priest,

When villages are grouped amalgamated, or divided.

The Board of Revenue is given power, in cases coming under clause (1) of Section 3, to group and amalgamate two or more villages into a single village, or divide a village into two or more villages, and thereupon the old offices cease to exist, and new offices which are hereditary are to be created; and the collector is to appoint persons to such offices whom he finds best qualified from among the families of the last holders of the offices which have been abolished.[1] When two or more village offices exist in the same village, the Board of Revenue may, subject to the approval of government, direct that the number of such village offices is to be reduced, and the collector thereupon is to dispense with the services of the officers no longer required, and to retain those whom he considers best qualified to discharge the duties of the remaining offices.[2] Power is given to the collector to fine, suspend, dismiss, or remove the holder of any office mentioned in clause (1) of Section 3 for misconduct, or for neglect of duty, or incapacity, or for non-residence in the village, or for any other sufficient cause.[3] Power is also given to a tahsildar or deputy tahsildar to fine such village officer in such amount as may be prescribed by the Board of Revenue.[4] The rules by which the collector is to be guided in making appointments to vacancies caused in village offices are the same as those applicable to proprietors under the Proprietary Estates Village Service Act.[5] The succession to village offices forming class (4)

1. *Section* 6 (1).
2. *Section* 6 (2).
3. *Section* 7 (1).
4. *Section* 7 (2).
5. *Section* 10.

of Section 3 is to devolve in accordance with the law or custom applicable thereto at the date on which the Act came into force.

Jurisdiction of Civil Courts under Regulation VI of 1831.

Regulation VI of 1831 was the first Regulation in this Presidency which ousted the jurisdiction of civil courts from taking cognizance of suits relating to service grants. Section 3 barred the jurisdiction of civil courts to entertain claims to the possession of, or succession to, such offices, or to the enjoyment of any other emoluments attached thereto, and invested the collector of the district in which the claim has arisen or may arise with power to adjudicate upon such claims. Provision was made to call in the aid of assessors to assist the collector in his enquiry. As the necessity for such prohibition ceased when a service grant was enfranchised, Madras Act IV of 1866 removed the restriction on the jurisdiction of civil courts. Section 1 of this Act enacted that a service inam which has been enfranchised from the condition of service by the Inam Commissioner was exempted from the operation of Regulation VI of 1831, and Section 2 declared that the title deed issued by the Inam Commissioner or an authenticated extract from his register was to be deemed sufficient proof of the enfranchisement of the land previously held on service tenure.

Karnam in permanently settled estates.

Section 8 of Regulation VI of 1831 excluded from its operation the office of karnam in permanently settled estates governed by Regulation XXIX of 1802. Suits in respect of lands forming the emoluments of the office of such karnam can be brought in civil courts and will be barred by adverse possession for more than twelve years.[1] The effect of such adverse possession is not merely that the office-holder for the time being is barred,

1. *Venkayya* v. *Suramma*, 12 Mad. 235; *Neelachalam* v. *Kamarazu*, 14 M.L.J. 438.

but all his successors in office.[1] A suit for the recovery of such land may also be met by the plea of *res judicata*.[2]

Under Act III of 1895.

Regulation VI of 1831 was repealed by Act III of 1895, and its main provisions re-enacted in the latter Act. Section 13 (1) authorises the institution of suits for the recovery of village offices and of the emoluments attached thereto before the collector, and Section 21 ousts the jurisdiction of civil courts to try any claim to succeed to any of the village offices, or any question as to the rate or amount of the emoluments of any such offices, except as provided for by the proviso to Section 13 (1), but empowers civil courts to set aside the appellate decree passed by revenue courts on the ground that no emoluments appertain to the office, if a suit for that purpose is instituted within six months from the date of appellate decree. Section 19 provides that all suits brought and appeals made under Regulation VI of 1831 are to be decided as if they were brought under this Act. An appeal to the District Colleetor against any order of a subordinate officer is to be brought within one month, and if the order or decree is passed by the District Collector himself, then the appeal lies to the Board of Revenue within three months, and the decision of the District Collector or the Board of Revenue, as the case may be, is final.[3] An exception, however, is made in the case of the holders of the offices of heads of villages or village accountants, to whom a right of second appeal to the Board of Revenue against the order of the District Collector is given.[4] The provisions of Sections 5 and 12 of the Indian Limitation Act are made applicable to

1. *Venkayya* v. *Suramma*, 12 Mad. 235 ; *Neelachalam* v. *Kamarauze*, 14 M.L.J. 438,

2. *Venkayya* v. *Suramma*, 12 Mad. 235.

3. *Section* 23 (1).

4. *Ibid.*

suits, appeals or applications for the execution of decrees or orders, instituted, preferred or made under the Act.[1]

The jurisdiction of the civil court is barred when the plaintiff sues for lands as the emoluments of his office and the defendant resists the claim on the ground that they are not the emoluments of the office; but not when the plaintiff states that they are not the emoluments of the office and the defendant denies it.

Alienation of service grants.

Section 2 of Regulation VI of 1831 declared that all emoluments derived from lands annexed by the state to hereditary village and other offices in the Revenue and Police Departments were inalienable from such offices by mortgage, sale, gift or otherwise, that transfers made thereafter by the holders thereof were *null* and *void*, and that such emoluments were not liable to attachment or other process in satisfaction of decrees of court. This provision was intended to secure the due discharge of the duties of the office by affording the holder the enjoyment of the land forming the emoluments of the office and to prevent it from passing into other hands. It was an appanage to the office inalienable by the holder and designed to be the emoluments of the officer into whose hands so ever the office might pass. This Regulation was repealed by Act III of 1895, and Section 5 of the Act prohibits absolutely the alienation of lands forming the emoluments of village officer and enacts that "the emoluments of village offices, whether such officer be or be not hereditary, and in the Schedule districts as defined in the Schedule Districts Act, 1874, all such emoluments and other emoluments granted or continued in remuneration for the performance of duties connected with the collection of the revenue or the maintenance of order, shall not be liable to be transferred or encumbered in any manner whatever, and it shall not be lawful for any court to attach or sell such emoluments or any portion thereof."

1. *Section* 25.

The prohibition contained in this section does not apply to personal grants, and alienation thereof by way of sale or mortgage is valid.

(*d*) *Grants in favour of religious and charitable objects.*

Devadayam.

Religious grants comprise not only grants made in favour of temples, mutts, mosques, takyas, durgas, and the like, but also those made in favour of the servants employed therein as remuneration for the performance of the various services connected therewith, and are denoted by the term *devadayam*. Grants made in favour of temples are also known as *amaniyas*. *Devadayam* grants may comprise whole villages or only portions thereof, and consist of assignments of land known as *sarvamanyams*, or of land revenue alone known as *tirwamanyams*, and generally grants in favour of temples are of assignments of land. In many temples special endowments for a certain specific service or religious charity are provided for, which are known as *katlais*.[1] Lands have been granted by private persons and added to the property of the temple for the purpose of performing *puja* or worship for the benefit of the souls of the grantors. This is known as *arei katlai manyams* in the Madura District. Sometimes lands have been granted by the old Rajas to private persons in order that they might transfer them to temples and thus be enabled to perform charitable acts which they could not otherwise do. This is known as *arei katlai village* lands.

Tasdik or mohini allowances.

Money allowances have also been made by previous governments in favour of temples and mosques for their maintenance, which are known as *tasdik* or *mohini* allowances and which have been continued by the British government. In consequence of the policy inaugurated in 1863 against any direct interference with religious institutions, government desired to

1. See the word explained by *Muthuswamy Ayyar, J.* in *Vaithilinga Pandarasannadhi* v. *Somasundra Mudaliar*, 17 Mad. 199; *Ambalavana Pandarasannadhi* v. *Minakshi Sundareswar Devasthanam*, 43 Mad. 665: 47 I.A. 191; *Vaithilinga Mudaliar* v. *Chidambaram Pillai*, 49 M.L.J. 520.

convert these ready money payments into assignments of land revenue. Accordingly with the consent of the trustees of the temples or mosques concerned lands in their possession paying land revenue were exempted from payment thereof to the extent of the *tasdik* or *mohini* allowance, or the land revenue of certain villages consisting either of first crop or second crop assessment was assigned in their favour. But where the trustees did not agree to such an arrangement, the allowance was continued to be paid. Since 1878 in deference to certain objections made and in order to keep the cash payments out of the finance accounts, the direct payment by government was stopped, and a system of indirect payments known as *beriz deductions* was introduced under which government deducts the amounts due to these temples and mosques from the total revenue of the village and the *monigar* is directed to pay them to the trustees of the temples and mosques concerned. Charitable grants comprise grants made for the maintenance of charitable objects, such as *chattrams*, *water pandals*, *topes*, *nandavanams*, *wells*, *ponds*, *bridges*, *schools*, and the like, and are known as *dharmadayam*.

Beriz deductions.

Dharmadayam.

The grant may be made in favour of the temple so as to make the lands comprised therein the property of the temple in which case the idol is the owner, or in favour of a temple servant subject to the condition of rendering services in which case he is the owner. It often happens that the trustee himself is a temple servant in which case it is a question of construction in each case whether the grant is made in his name on his own account or on behalf of the temple.

In favour of temples or trustees.

Grants in favour of religious and charitable objects were always made in perpetuity, and temporary grants in their favour have never been made. The Hindu law imposes religious penalties for resumption of such grants, although not expressed in them,

Grants generally perpetual.

and the omission of such penalties in the grant does not derogate in any wise from the durability of the grant. No act on the part of a Hindu sovereign would have been considered more disgraceful than the resumption of a religious grant. A periodical allowance made payable in favour of a religious or charitable institution by the sovereign is known as *nibandha* or *corrody*.

Alienation of service inams.

As regards alienation by holders of service inams doing services the earlier view taken was that an alienation of lands forming the emoluments of an office made by the holder for the time being was valid only during his life and could be avoided by his successor.[1] The later decisions have taken a restricted view of his rights and have held that the sale by the office-holder is void, as being opposed to public policy and the nature of the interest conveyed.[2] But ordinary leases for the period during which he is performing services, or as long as he is alive is valid.[3] Permanent leases and leases for such a long period as will practically amount to an alienation are not binding upon the successor in office and are voidable at his existence.[4] Possession of lands will not constitute adverse possession unless it is accompanied by adverse possession of the office also.[5]

By deputy.

As the duties of a religious Hindu office can generally be performed by a deputy, a woman can hold it, unless there is a custom to the contrary, and the onus of proving the custom is on the person setting it up.[6] A Mahomedan religious office also

1. *Pakkiam Pillai* v. *Sitarama Vathiyar*, 14 M.L.J. 134.
2. *Anjaneyulu* v. *Venugopal Rao Rice Mills Ltd.*, 45 Mad. 620; *Sundararaju Dikshatulu* v. *Seshadri Dikshatulu*, 54 M.L.J. 76.
3. *Ibid.*
4. *Sundararaju Dikshatulu* v. *Seshadri Dikshatula*, 54 M.L.J. 76.
5. *Komalathammal* v. *Krishna Pillai*, 20 M.L.J. 781.
6. *Annayya Tantri* v. *Ammaka Hengsu*, 41 Mad. 886.

can be held by a woman, unless there are duties of a religious nature which she could not perform either by herself or through a deputy.[1]

Permanent lease by manager or trustee of religious or charitable institutions.

The power of alienation of the manager or trustee of a religious or charitable institution is analogous to that of the manager of an infant,[2] defined by the Privy Council in *Hanuman Persad Pandey* v. *Mussammat Munraj Koonwari.*[3] His power being thus limited, he cannot grant a permanent lease of endowed property in the absence of special circumstances justifying it. The leading case on this subject is that of *Maharanee Shibessouree Debia* v. *Mothooranath Acharjo*.[4] In this case the Privy Council observed, "In the exercise of that office," she, *i.e.*, the trustee "could not alienate the property, though she might create proper derivative tenures conformable to usage"........" To create a new and fixed rent for all time to come, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time would be a breach of duty in a shebait aud is not presumable." Therefore a permanent lease of endowed property is invalid, in the absence of special circumstances justifying it.[5]

Alienation of religious offices.

Alienations of religious offices are opposed to public policy, and a custom sanctioning it is valid, but not a custom whereby the holder gets benefit to himself.[6] The principle of non-alienability of religious offices and their emoluments applies, even when they are sought to be sold in execution of a decree.[7]

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1. *Munnavaru Begum Saheb* v. *Mir Mahapalli Saheb*, 41 Mad. 1033.
2. *Prosonno Kumari Debia* v. *Gopal Chund Babu*, 2 I.A. 145.
3. 6 M.I.A. 393 (423, 424).
4. 13 M.I.A. 270 (273, 275).
5. *Mayandi Chettiar* v. *Chockalingam Pillai*, 27 Mad. 291; 31 I.A. 83; *Vidyavaruthi* v. *Baluswami Ayyar*, 44 Mad. 831 : 48 I.A. 302 : *Naina Pillai Marakayar* v. *Ramanathan Chettiar*, 47 Mad. 337 : 51 I.A. 83.
6. *Raja Varma Valia* v. *Ravi Varma*, 1 Mad. 235 : 4 I.A. 76.
7. *Lakshmanasami Naidu* v. *Rangamma*, 26 Mad. 31.

CHAPTER VIII.

RESUMPTION AND ENFRANCHISEMENT.

Resumption.

Resumption consists in putting an end to the grant under which lands are held, remitting the services and requiring the grantee to pay full assessment.[1] The grantor may, when he dispenses with the services, alter the grant into a perpetual one upon a fixed payment, and until this is done, can go on increasing the rent. And when he dispenses with the services, he may seek to recover possession of the land, when land itself has been the subject-matter of the grant, as in the case of waste or private lands of the zemindar. But, as pointed out by *Bhashyam Ayyangar, J.* no purpose will be gained by the adoption of this course.[2] On the other hand, where the grant is of the income or rent derivable from land of which the grantee was already in possession, and the beneficial interest conveyed is only the exemption from liability to pay rent, resumption being only the putting an end to that beneficial tenure can have no reference to land.[3] Following the presumption of occupancy right prevailing in zemindaris, as laid down in *Cheekati Zemindar* v, *Ranasooru Dhora,*[4] it has been held that, when the services of the holder of a *darmilla* inam (*i.e.*, an inam granted subsequent to the permanent settlement) are dispensed with, he acquires a right of occupancy therein, unless the grantor proves

By zemindar.

1. *Unide Rajaha Bommarauze Bahadur* v. *Venkatadri Naidu*, 7 M I.A. 123.

2. *Gunnaiyan* v. *Kamashi Ayyar*, 26 Mad. 339.

3. *Idubilly Seyyadi* v. *Visweswara Nissanka*, 18 M.L.T. 142.

4. 23 Mad. 318. The presumption has since been considerably weakened by the decision of the Privy Council in *Suryanarayana* v. *Potanna*, 41 Mad. 1012: 45 I.A. 109, *per Ramesam, J.* in *Muthu Goundan* v. *Perumal Iyen*, 44 Mad. 588.

a special contract or a custom negativing it,[1] and that the holder of lands held on service tenure, as soon as the services are dispensed with, becomes an occupancy right under the Estates Land Act.[2] But where land was already in the possession of the grantee and the creation of the beneficial tenure was only an exemption from liability to pay rent, the grantee on resumption becomes entitled to occupancy right and cannot be sued in ejectment.[3]

By government.

Land revenue.

In the case of grants made by government also, resumption has the same effect. Where the grant is of land revenue alone, resumption has no effect on the land and interference therewith is not at all intended,[4] as the government cannot resume anything more than what had been granted which was only land revenue. In such cases the only effect of resumption is that the inamdars who had hitherto been receiving land revenue as inam cease to receive it. But where the grant is of the land itself, namely, land which was at the disposal of government at the time of the grant and not merely land revenue, it is open to government when resuming the land to grant it to another, but as in the case of the zemindar no purpose will be gained by the adoption of this course. Under the rules framed by government for the resumption and enfranchisement of inams, dispossession of the holders is not intended, and even in cases where they derive title through fraud, or are in possession of excess land, only the full assessment is levied. It is only on their refusal to pay it that the lands are resumed. After resumption, the resumed lands are classed with *ryotwari* lands and *ryotwari* pattas issued to their holders.

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1. *Gajapati Maharaju Garu* v. *Sondi Prahlada Binoyi Ratno*, (1914) M.W.N. 179.
2. *Zemindar of Tarla* v. *Barikivadu*, 44 Mad. 697.
3. *Idubilly Seyyadi* v. *Visweswara Nisssanka*, 18 M. L. T. 142.
4. *Gunnaiyan* v. *Kamakshi Ayyar*, 26 Mad. 339; *Jagganadham* v. *Secretary of State*, 27 Mad. 16.

Resumption and enfranchisement.

In resumption full assessment is levied, while in enfranchisement only a portion thereof varying with the circumstances of each case is levied. A resumed land like any other *ryotwari* land is liable to revision of revenue at every periodical settlement, which is not the case with reference to an enfranchised land, unless such right is expressly reserved in the inam title deed, as is found in the recent inam title deeds. The most important distinction between the two is that while enfranchisement affects only the tenure under which the lands are held by converting a restricted tenure into an absolute one resumption goes further and affects the ownership as well and puts an end to the rights of the holder,[1] so that one trustee to whom a resumed charitable inam has been granted holds it free of the claim of his co-trustee who was also entitled to it before resumption.[2] The effect of the resumption of a charitable inam and issue of a *ryotwari* patta to the inamdar is to put an end to any occupancy right acquired by ryot either by grant or prescription against the inamdar prior to such resumption.[3] This view has been dissented from.

Nature of resumption.

What is the nature of the resumption exercised by government in assessing to revenue lands not hitherto subject to it? Is it of the nature of an Act of State which prevents municipal courts from inquiring into it, or merely an act done under colour of a legal title? The first case in which the question arose was that of *East India Company* v. *Syed Ally*.[5] In that case the Nawab of the Carnatic granted a *jagir* to Assim Khan and his heirs, which was afterwards confirmed by his successor.

1. *Ponniah* v. *Katamma*, 40 Mad. 939; *Sampath Rao* v. *Appasami Nainar*. (1930) M.W.N. 385.

2 *Ibid.*

3. *Subramania Ayyar* v. *Onnappu Goundan*, 39 M.L.J. 629; *Sadasivurayudu* v. *Venkatasami*, 62 M.L.J. 598.

4. *Venkatappa Charyulu* v. *Royapareddi*, 44 Mad. 550.

5. 7 M.I.A. 555.

Subsequently, in pursuance of a treaty entered into between the East India Company and the then Nawab of the Carnatic, whereby the sovereign rights of the Nawab over the Carnatic were ceded to the East India Company, the latter resumed the *jagir* on the death of Assim Khan and regranted it to one of his sons for life dependent on the British government, and reserving to itself sayer, salt and saltpetre duties. The other legal heirs of Assim Khan under the Mahomedan law sued the East India Company for a declaration that the resumption and regrant were invalid. The Privy Council held, reversing the decision of the Supreme Court of Madras, that the resumption and regrant were acts of sovereignty which precluded the municipal courts from taking cognizance of the claim. This case was followed by the Privy Council in *Secretary of State* v. *Kamachee Boyee Saheba.*[1] The same point arose in *Karunakara Menon* v. *Secretary of State.*[2] It must be noticed that these cases related to transactions under treaties with either the Nawab of the Carnatic, or the Raja of Tanjore, each of whom was an independent prince exercising sovereign rights within his territories. These cases were sought to be applied by government in the case of *Forester* v. *Secretary of State.*[3] In this case the Begum Sumroo held certain *jagirs* in the Doab under Daulat Rao Scindia upon a *jaidad* tenure, *i.e.*, upon a tenure of a certain district together with the public revenue of it on condition of keeping up a body of troops, to be employed when called upon in the service of the sovereign under whom the *jagir* was held. On the cession of the Doab by Daulat Rao Scindia in 1803 which included the *jagirs* held by the Begum Sumroo, the British government in consideration of the services rendered by her in the war with Scindia entered into an agreement with her in 1805, whereby it was agreed that she was to hold for her life her territories in the Doab from the East India Company as she

1. 7 M.I.A. 476.
2. 14 Mad. 431.
3. I.A. *Sup Vol.* 10 : 18 W.R. 349.

had held them before under Scindia. On her death the British government resumed the *jagirs* and the question was raised as to the character of such resumption. The Privy Council referring to the Tanjore case[1] said, "There the Raja of Tanjore though he may have had less substantial power than that exercised by the Begum Sumroo, retained at least the shadow of original and independent sovereignty. Lord Kingsdown thus puts the question :—'What was the real character of the act done in this case? Was it a seizure by arbitrary power on behalf of the Crown of Great Britain of the dominions and property of a neighbouring State, an act not affecting to justify itself on grounds of Municipal law or was it, in whole or in part, a possession taken by the Crown under colour of legal title of the property of the late Raja of Tanjore in trust for those who, by law, might be entitled to it on the death of the last possessor. If it were the latter, the defence set up has no foundation," and observed, "The act of Government in this case was not the seizure by arbitrary power of territories which up to that time had belonged to another Sovereign State; it was the resumption of lands previously held from the government under a particular tenure, upon the alleged determination of that tenure. The possession was taken under colour of a legal title, the title being the undoubted right of the sovereign power to resume, and retain or assess to the public revenue all lands within its territories upon the determination of the tenure under which they may have been exceptionally held rent free. If by means of the continuance of the tenure or other cause a right be claimed in derogation of this title of the government that claim like any other arising between the government and its subjects would *prima facie* be cognizable by the Municipal Courts of India." Following this decision the Madras High Court has in a number of cases taken cognizance of suits in which the right of resumption exercised by government was questioned.

1. *Secretary of State* v. *Kamachee Boye Saheba*, 7 M.I.A. 476.

Sovereign's right to assess.

The right of government to resume and levy assessment on lands not hitherto subject to it is one not conferred by any legislative enactment, but one exercised *from time immemorial*, and there is no period of limitation within which alone government must exercise that right. Therefore it has been held that non-payment of revenue for more than sixty years will not extinguish that right. These cases have been decided with reference to Section 4 of Regulation XXV of 1802 and must be limited thereto.[1] In cases not coming under that Regulation, when government sought to enfranchise and impose quit rent on inam lands, it has been held that it is open to the claimant to show that he had acquired title by adverse possession for 60 years as against government prior to enfranchisement.[2] In Bengal limitation as a ground of exemption can be pleaded in a suit for resumption.[3]

When arises.

In the case of personal inams, *i.e.*, inams for subsistence granted for life or lives, the right to resume arises on the expiration of the life or lives for which they are granted. In the case of inams granted for two or more lives, the generation succeeding the first life will be considered the second life and the following generation will be considered the third life.[4] Hereditary personal grants are resumed on breach of the conditions on which they are understood to be held.[5] In the case of grants for religious or charitable purposes, the right arises on the failure of the conditions under which they are held; and in the case of village service inams, when the grantees nc

1. *Jagganatham* v. *Secretary of State*, 27 Mad. 16.

2. *Krishna Sastri* v. *Singaravelu Mudaliar*, 48 Mad. 570; *Gowri Kantam* v. *Ramamurthi*, 46 M.L.J. 482; *Maniappa Udayan* v *Sabapathy Asari*, 53 M.L.J. 515.

3. *Maharaja Dheeraj* v. *Government of Bengal*, 4 M.I.A. 466; *Koylashbashiny Dossee* v. *Gocoolamoni Dossee*, 8 Cal. 230; *Ananda Kumar Bhattacharjee* v. *Secretary of State*, 43 Cal. 973.

4. *Ante*. pp. 129, 130.

5. *Ante*. pp. 128, 129.

longer perform the duties of the office or their services are no longer required. But government is not bound to exercise its right of resumption, and when it does, may exercise it partially.[1] The motive of government in making the resumption and its subsequent conduct do not affect the validity of the resumption[2] and when it does not choose to exercise it, the court cannot compel it and order resumption.[3] Where the right to resume is disputed, the government must prove it.[4]

Who can resume inams.

Government alone has got the right of resuming inams granted for public purposes. The permanent settlement made with zemindars reserved to government certain items of revenue, and the *peshkush* was arrived at by excluding them. Section 4 of Regulation XXV of 1802 reserves among other items "*lakhiraj* lands (or lands exempt from the payment of public revenue) and of all other lands paying only favourable quit rents," and Section 12 declares that zemindars are not competent to resume and fix a new assessment on them. Section 4 is only declaratory of the principles on which the permanent settlement is effected, and the *peshkush* arrived at, and does not apply when the permanent settlement is effected apart from its provisions.[5] The right of resumption in pre-settlement inams, *i.e.*, inams which were in existence at the time of the permanent settlement and whose rentals have not been included in the assets arrived at in fixing the *peshkush* is in government, and the zemindar has no manner of right with them.[6] The ownership therein is vested in the inamdars subject to

By government.

1. *Bhashyam Iyengar, J.* in *Gunnaiyan* v. *Kamakshi Ayyar*, 26 Mad. 339.
2. *Velu Pillai* v. *Secretary of State*, A.I.R. (1928) Mad. 852.
3. *Seshadri Reddy* v. *Subramania Ayyar*, 16 L.W. 839.
4. *Raja of Vizianagaram* v. *Gangada*, 39 M.L.T. 338; *Venkatasubba Rao* v. *Sivaji*, (1927) M.W.N. 609.
5. *Secretary of State* v. *Raja of Venkatagiri*, 44 Mad. 864 : 48 I.A. 415 affirming 31 M.L.J. 97.
6. *Secretary of State* v. *Raja of Pittapur*, 24 M.L.J. 530; *Veerabadrayya* v. *Venkanna*, 24 M.L.J. 659.

resumption by government.[1] In some cases only the jodi payable on inams has been included in the assets of the zemindary, and the zemindar has no right thereto beyond the collection of the jodi, the right of resumption being in government. But it can enfranchise the inam only in favour of the inamdar and cannot issue patta to the zemindar in whose zemindary it is situated[2]; nor can it issue patta to him because it is not able to localize or identify the inam.[3] When an inam has been granted and confirmed by government for the purpose of performing religious services in a temple, the right of resumption for non-performance of the duties vests in government and not in the temple trustees.[4]

In permanently settled estates.

As regards lands or assignments of land revenue granted for remuneration of village offices in permanently settled estates, government can resume them if they have been granted or continued by it.[5] Therefore it was held that in order to enable it to resume it must be shown that the inam originated in the first instance from it, or its continuance was due to an act of it.[6] But this rule is not an absolute one and the continuance of the inam by government can be presumed. Therefore where land was in its inception service inam land existing at the date of the permanent settlement, was treated as such at the time when an account of the zemindary was subsequently taken, and the holder thereof treated as of service inam land, it was held that it was service inam land continued by government and liable to be resumed by it.[7] It has no right to resume an inam

1. *Veerabadrayya* v. *Venkanna*, 24 M.L.J. 659.

2. *Secretary of State* v. *Raja of Pittapur*, 24 M L J. 530.

3. *Ibid.*; *Rama Rao* v. *Secretary of State*, (1912) M.W.N. 542; *Rama Rao* v. *Secretary of State*, (1913) M.W.N. 639.

4. *Sarayya* v. *Vaidianathan*, 27 M L.J. 57; *Chiranjivi* v. *Maniakaya Rao*, 27 M.L.J. 179.

5. *Section* 17, Act. II, *of* 1894.

6. *Secretary of State* v. *Bhanamurthy*, 24 M.L.J. 538.

7. *Pitchayya* v. *Secretary of State*, 11 L.W. 186; *Venkayamma* v. *Secretary of State*, A.I.R. (1929) Mad. 399; *Secretary of State* v. *Vasi Reddy*, 30 L.W. 129.

granted by the proprietor of an estate subsequent to the permanent settlement.[1]

By zemindar.

The zemindar is the owner of pre-settlement inams when their full rental has been included in the assets of the zemindary at the time of the permanent settlement,[2] and of all inams granted by him subsequent to that date.[3] Inams granted subsequent to the permanent settlement are known as *post settlement* or *darmilla* inams. The right of resumption in both classes of inams is in the zemindar and government has no right to resume them. When in any case a question arises whether the rental of an inam has been included in the assets or not, who is to prove it? In *Hurryhur Mookhopadha* v. *Madhub Chunder Baboo*,[4] the Privy Council observed that the mere fact that lands were situated within the geographical limits of the zemindary did not show that they were the *mal* (revenue paying) lands which the zemindar was entitled to resume, and that the onus was on him to prove that they were so included. The Privy Council in making the above observations overlooked those made by it in an earlier case, *Raja Sahib Perhlad Sein* v. *Kaleepershad Tewaree*,[5] that the appellant therein, a zemindar, as such, "has a *prima facie* title to the gross collections from all the mouzas within his zemindary. It lay upon the respondents to defeat that right by proving the grant of an intermediate tenure." Recent decisions of the Privy Council have held when the contest arose between a zemindar and government "that the lands in dispute admittedly lie within the ambit of the estates settled with the plaintiff's ancestors. The respondents are the zemindars and 'as such they have a *prima facie*

1. *Secretary of State* v. *Bhanamurthy*, 24 M.L.J. 538.

2. *Unide Rajaha Raja Bommarauze Bahadur* v. *Venkatadri Naidu*, 7 M.I.A. 128 ; *Forbes* v. *Meer Mahomed Tuquee*, 13 M.I.A. 438.

3. *Sitaramarazu* v. *Ramachandra Razu*, 3 Mad. 367 ; *Sanniyasi Razu* v. *Zemindar of Salur*, 7 Mad. 268 ; *Mahadevi* v. *Vikrama*, 14 Mad. 365.

4. 14 M.I.A. 152 ; See also *Forbes* v. *Meer Mahomed Tuquee*. 13 M.I A. 438.

5. 12 M.I.A. 286.

title' to use the language of this Board in the well known case of *Raja Sahib Perhladsein*[1] to the full enjoyment of every parcel of land within their zemindaris for which they pay revenue to government. It rests upon the defendant to show that when the zemindaris were confirmed to the plaintiffs, it was subject to reservations in respect of any land which gave the power of resuming and assessment."[2] But this presumption does not apply as between the zemindar and other persons who are not parties to the permanent settlement.[3] The Madras High Court, following the observations of *Sir Barnes Peacock* made in *Raja Nilmoney Singh* v. *The Government*,[4] quoted without disapproval by the Privy Council in *Raja Nilmony Singh* v. *Backranath Singh*,[5] that "the Government would not have allowed any portion of their revenue in consideration of private services to be rendered to the zemindar" held that in cases of inams granted by the zemindar before the permanent settlement whereby private or personal services were reserved to him there was a presumption that they were included in the assets of the zemindary, and that the onus was on government to show that they were not included.[6] The accounts on which the permanent settlement was effected being with government, it can easily show by reference thereto what items were included.[7] But the inclusion

1. 12 M I.A. 286 (331).

2. *Secretary of State* v. *Kirtibas Bhapat*, 42 Cal. 710 : 42 I.A. 30; *Ranjit Singh* v. *Kali Dasi Debi*, 44 Cal. 841 : 44 I.A. 117; *Gobinda Narain Sinha* v. *Sham Lall Singh*, 58 Cal. 1189 : 58 I.A. 125; *Baswuri Charan Singh* v. *Kamakya Narain Singh*, 10 Pat. 276 : 58 I.A. 9; cf. *Wise* v. *Bhoobun Moyee Debia*, 10 M.I.A. 165.

3. *Subba Rao* v. *Raja of Pittapur*, 53 M.L J. 400.

4. 6 W.R. 121, affirmed by the Privy Council in 18 W.R. 321; *Veeraswami* v. *Seetharam*, 51 M.L.J. 394.

5. 9 I.A. 104 (121).

6. *Venkatarangayya Appa Rao* v. *Appalarazu*, 20 M L.J. 728; *Parthasaradhi Appa Rao* v. *Secretary of State*, 38 Mad. 620; *Suryanarayana Raju* v. *Secretary of State*, 1 L.W. 662; *Tiruvenkata Charyuloo* v. *Shaik Aloo Sahib*, 50 M.L.J. 251.

7. *Parathasaradhi Appa Rao* v. *Secretary of State*, 38 Mad. 620.

of a pre-settlement inam in the assets of the zemindary will not prejudice the rights of the inamdars[1]; nor will the mere description of an agraharam village as a jeroyati village in the settlement papers enable the zemindar to turn out the *agraharamdar*.[2] Though a grant is hereditary, it is liable to resumption if the circumstances are such that the grantor can resume it.[3]

Grounds of resumption.

Though the zemindar is the owner of such inams and has got a *prima facie* title to resume them, his right to resume depends on other circumstances. They were set out by the Privy Council in the case of *Forbes* v. *Meer Mahomed Tuquee*.[4] In that case a rent-free jagir had been granted by the East India Company to the ancestor of the defendant in 1775 in consideration of his past services in preventing the incursions of elephants upon the cultivated lands of the pergannah and future services in the same way whereby cultivation might be extended and the ryots protected. In 1850 the zemindary in which the jagir was situated was sold for arrears of government revenue and the purchaser at the revenue sale sought to resume the jagir on the ground that the services were no longer required. His claim was rejected. The Privy Council held that after such a long and undisturbed possession, it lay on the purchaser to make out a clear title to resume which he failed to do. It observed, "The conclusion which they would draw from the decided cases, as well as from the reason of the thing is, that in every case the right to resume must depend in a great measure upon the nature of the particular tenure, or the terms of the particular grant. They agree with the observation of *Mr. Justice Jackson*, Weekly Reporter, Vol. 6, p. 209,[5] that there is a clear distinction

1. *Forbes* v. *Meer Mahomed Tuquee*, 13 M.I.A. 438 (460).
2. *Vyricherla Razu Bahadur* v. *Bugavat Sastri*, 25 W.R. 3 (P.C.).
3. *Lakshmi* v. *Chendri*. 8 Mad. 72.
4. 13 M.I.A. 438.
5. *Baboo Kooldeep Narain Singh* v. *Mahodo Singh*.

between the grant of an estate burdened with a certain service and the grant of an office the performance of whose duties is remunerated by the use of certain lands. They have already stated that, in their opinion, the grant in question does not fall within the latter category. Assuming it to be a grant of the former kind, their Lordships do not dispute that it might have been so expressed as to make the continued performance of the services a condition to the continuance of the tenure. But, in such a case, either the continued performance of the service would be the whole motive to, and consideration for the grant, or the instrument would, by express words, declare that the service ceasing, the tenure should determine. It appears to their Lordships that neither the first nor the second *sunnud* is a grant of the kind last mentioned. Each proceeds in part upon the past services of *Meer Syud Ally*; nor is the consideration, so far as it is unexecuted, wholly the keeping up of a body of men to repel the incursions of the elephants, for the grantees are also to cultivate the waste land. The latter stipulation was probably designed to protect the already cnltivated districts of Pergunnah Sultanpore by interposing a further belt of cultivation between them and the forest. Hence the grant may be said to have been made *pro servitiis impensis et impendendis*—partly as a reward for past, partly as an inducement for future, services. Again, neither *sunnud* contains any words which expressly import that the tenure shall cease if and when any of the services cease to be performed. Such a provision is something very different from one which merely casts upon the grantee the performance of certain duties so long as they are necessary. The former makes the grant determinable when there is no further occasion for the services. But, in the latter case, if the operation of any natural cause (as, *e.g.*, the progress of cultivation, which has caused the wild elephants to cease out of the land) removes the necessity for the services, the grantee will hold the land freed from the condition originally imposed on him. Their Lordships are, therefore, of opinion, that upon the true construction of these *sunnuds* the grantees,

though bound to protect the Pergunnah from the incursions of wild elephants so long as those incursions lasted; and though still bound to do so should, by any chance, those incursions be renewed; and though they may be liable to forfeit the tenure if they wilfully fail in the performance of this duty, are not liable to have their lands resumed because there is no longer any occasion for the performance of this particular service, 'there being no fear of the depredations of elephants in those places'[1].

Four classes of grants.

Thus the question of resumption depends upon the terms or nature of the grant in each particular case, which further depends upon the question whether the grant is one burdenedwith services, or merely one in lieu of wages.[2] For a clear elucidation of the subject grants may be divided into four classes: (1) grants for services of a public nature; (2) grants for services, private or personal; (3) grants burdened with services and (4) grants in lieu of wages, *i.e.*, grants of an office the performance of whose duties is remunerated by grants of certain lands.

When the grantor seeks to resume, the burden is on him to show his right of resumption[3]; and when any question arises as to which class a grant falls there is no presumption one way or the other.[4]

Before a grantor resumes, the grantee is entitled to a reasonable notice,[5] and in the absence of such notice, a suit

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1. 13 M.I.A. 464-666. *Kooldeep Narain Singh* v. *The Government*. 14 M.I.A. 247.

2. *Forbes* v. *Meer Mahomed Tuquee*, 13 M.I.A. 438; *Lakahamgavda* v. *Baswantrao*, 61 M.L.J. 449 (P.C.).

3. *Lakhamgavda* v. *Baswantrao*, 61 M.L.J. 449 (P C.).

4. *Tiruvenkata Charyulu* v. *Sheik Altoo Saheb*, 50 M.L.J. 251; *Raja of Vizianagaram* v. *Appalasami*, 59 M.L.J. 183.

5. *Unide Rajaha Raja Bommarauze Bahadur* v. *Venkatadry Naidu*, 7 M.I.A. 128; *Lakshmi* v. *Chendri*, 8 Mad. 72; *Narasayya* v. *Venkatagiri Raja*, 23 Mad. 262.

for resumption is liable to be dismissed.[1] But where the grantee refuses to perform services, he is liable to be ejected without notice.[2]

(*a*) *Grants of a public nature* :—

These are grants which involve police or magisterial duties, or in which the community or the villagers or any portion of them are interested. Many of the duties which were public or *quasi* public before the permanent settlement have ceased to be such after that date. The government alone can resume them, and the zemindar is not *prima facie* entitled to resume them as the rentals thereon would have been excluded from the assets of the zemindary.[3]

(*b*) *Grants for services, private or personal* :—

These grants are distinguished form those in class (*a*).

Grants for personal services.

The grantor is entitled to resume them when the services cease, or are dispensed with, whether they were granted before the permanent settlment,[4] or subsequent to it; [5] in the former case, their rentals must have been included in the assets. This gives him only a bare right and actual resumption depends upon the nature of the grant which will further depend upon the question whether the grant is one burdened with services or merely one made in lieu of wages. The earlier view taken was that in the case of a grant made subsequent to the

1. *Lakshmi* v. *Chendri*, 8 Mad. 72; *Narasayya* v. *Venkatagiri Raja*, 23 Mad. 262.

2. *Hurrogobind Rah* v. *Ramnatan Dey*, 4 Cal. 67.

3. *Raja Nilmoney Singh* v. *Governmenl*, 18 W.R. 321 (P.C.); *Raja of Vizianagram* v. *Ramaswami*, 52 M.L.J. 283; cf *Parthasarathy Appa Rao* v. *Secretary of State*, 38 Mad. 620.

4. *Unide Rajaha Raja Bommarauze Bahadur* v. *Venkatadry Naidu*, 7 M.I.A. 128; *Forbes* v. *Meer Mahamed Tuquee*, 13 M.I A. 438; *Raja Nilmoney Singh* v. *Government*, 18 W. R. 321 (P. C.); *Venkatarangayya Appa Rao* v. *Secretary of State*, 20 M. L. J. 728; *Parthasarathy Appa Rao* v. *Secretary of State*, 38 Mad. 620; *Suryanarayana Raju* v. *Secretary of State*, 1 L.W. 662.

5. *Sitarama Razu* v. *Ramachandra Razu*, 3 Mad. 367; *Sanniyasi Raju* v. *Zemindar of Salur*, 7 Mad. 268; *Mahadevi* v. *Vikrama*, 14 Mad. 365; *Vadisapu Appandora* v. *Vyricherla Virabadraju*, (1911) 2 M.W.N. 406; *Gajapati Maharaja Garu* v. *Sondi Prahalada Binoyi Ratno*, (1914) M.W.N. 179.

the permanent settlement, the presumption is that it is one made in lieu of wages.[1] It can, however, be shown that the grant is not one merely in lieu of wages, but one burdened with services.[2] But it has been held that there is no such presumption.[3]

Grants burdened with services.

(c) *Grants of estates burdened with services* are those in which lands are granted outright subject only to the performance of certain specified services. These classes of grants may be so expressed as to make the continued performance of the services a condition to the continuance of the tenure, and unless so expressed, the grantor will have no right to resume them, if the grantee is able and willing to perform the services, even though they are no longer required.[4]

(d) *Grants of an office the performance of whose duties is remunerated by grants of land.*

Grants is remuneraticn of services.

These classes of grants can be resumed by the grantor when he dispenses with the services, or when the necessity for them has ceased.[5] In grants made subsequent to the permanent settlement, the presumption is that it is made in lieu of wages.[6] This view has been dissented from.[7]

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1. *Sanyasi Razu* v. *Zemindar of Salur*, 7 Mad. 268; *Mahadevi* v. *Vikrama*, 14 Mad. 365; *Sobhanadri Appa Rao* v. *Venkataramayya*, 26 Mad. 403; *Viveeswara* v. *Budardo*, (1910) M.W.N. 436; *Vadisapu Appandora* v. *Veerabadraraju*, (1911) 1 M.W.N. 406; *Gajapati Maharaj* v. *Sonti. Prahlada Binoji Ratno*, (1914) M.W.N. 179 *Chcwdanna* v. *Venkatapathinarayain Varu*, 50 M.L.J. 429; *Raja of Vizianagram* v. *Ramasami*, 52 M.L.J. 283.

2. *Mrutyunjayadu* v. *Raja of Pittapiram*, 30 M.L.J. 132.

3. *Tiruvenkata Charyuloo* v. *Sheikh Altoo Sahib*, 50 M.L.J. 251; *Raja of Vizianagram* v. *Appalasami*, 59 M.L.J. 183.

4. *Forbes* v. *Meer Mahom·d Tuquee*, 13 M. I. A. 438; *Lilanand Singh* v. *Munorunjan Singh*, 13 Ben. L.R. 124; L.R. I.A. Sup. Vol, 181.

5. *Forbes* v. *Meer Mahomed Tuquee*, 13 M.I A, 438; *Sitarama Razu* v. *Ramachandra Razu*, 3 Mad. 367.

6. *Sanniyasi Razu* v. *Zemindar of Salur*, 7 Mad. 268; *Mahadevi* v. *Vikrama*, 14 Mad. 365; *Sobanadri Appa Rao* v. *Venkata Appa Rao*, 26 Mad, 403; *Raja Viveeswara* v. *Budarado*, (1910) M.W.N. 436; *Vadisapu Appandora* v. *Vyricherla Veerabadraraju*, (1911) 2 M.W.N. 406; *Chowdanna* v. *Venkatapathinarayain Varu*, 50 M.L.J. 429; *Raja of Vizianagram* v. *Ramaswami*, 52 M.L.J. 283.

7. *Tiruvenkata Charyulu* v. *Sheik Altoo Sahib*, 50 M.L.J. 251; *Raja of Vizianagram* v. *Appalaswami*, 59 M.L.J. 183.

Adverse possession.

Where lands are held on tenure of service, the mere non-rendering of services for any length of time will not constitute adverse possession of the lands so as to bar the grantor's right of resumption.[1] In order to constitute adverse possession, there must be a refusal to perform services or a claim to hold the lands free of services.[2]

Inquiry into inam title.

The large sacrifice of revenue involved in the existence of inams attracted the attention of British administrators at a very early period and caused a recognition of the importance of a general inquiry into titles to rent free lands. With this object in view revenue surveys were made in all the districts of the Presidency, except the Northern Sirkars which were for the most part held by zemindars, and on these occasions every village and field held exempt from the payment of revenue were carefully recorded. But the unsettled state of the country did not admit of a general scrutiny into the rights of inam holders, and consequently exempted lands were not interfered with during the earlier surveys. About this time Regulation XXXI of 1802 was passed, the object of which was to try the validity of titles of persons holding or claiming to hold lands exempt from the payment of revenue under grants not being *badshahi* or royal. Again Regulation IV of 1831 extended by Acts XXXI of 1836 and XXXIII of 1838 prohibited civil courts from taking cognizance of claims to personal or hereditary grants of land or land revenue, whether conferred by the British Government or made by native Governments, and confirmed or continued by the British Government, except with its permission. Regulation VI of 1831 extended this prohibition to claims to the possession of, or succession to, hereditary offices in the revenue and police departments or to the enjoyment of

1. *Narayanasamier* v. *Rama Iyer*, 7 I.C. 252; *Venkatasami* v. *Amanna*, (1921) M.W.N. 378.

2. *Ibid.*

the emoluments annexed thereto. The manifest objects of these Regulations were to prevent inams from being diverted from the purposes for which they were granted, and to secure to government its reversionary rights in cases of lapse.

Subsequent action taken.

These Regulations remained a dead letter, and no active measures were taken to vindicate the law or to assert the rights of government until 1845 when it issued orders strictly prohibiting local officers from continuing inams on the occurrence of lapses, and directing that each case should be reported for orders through the Board of Revenue. A prohibition was issued in 1846 against the devolution of inam property by adoption, unless the adoption was reported at least six months before the death of the party making it. The Court of Directors proposed to limit the continuance of charitable grants to the lives of the existing holders on the ground that it was objectionable in principle that a portion of land revenue should be set apart for the maintenance of a class of persons who had no legitimate claims on the state. The insurrection of Narasimha Reddy in the Cuddapah District ascribed to a course of measures in violation at once of the stipulated and prescribed right of property induced government to adopt a more liberal policy with regard to long undisturbed possession. Accordingly rules were framed which gave considerable latitude to Collectors to continue inams in all ordinary cases, but required a report to the Board of Revenue and ultimately to government in those cases where the inam had passed out of the original family, or had been fraudulently obtained or irregularly inherited ; where it was claimed on invalid grounds, as through the female line or by a collateral branch in virtue of an illegal or suspicious adoption ; or generally where there were circumstances affecting the prior transmission of the inam or the title of the existing claimant. The immediate attachment of inams on the occurrence of lapses which was a source of great distress was prohibited.

The general effect of these rules was to bring a vast number of cases under inquiry and resulted in charging the district officers with numerous investigations of a complex and difficult character which they found it difficult to deal concurrently with their regular duties ; while the state of uncertainty which the investigations involved under the rules gave rise to a feeling of irritation and insecurity on the part of the holders of inam lands.

Inam Commission.

Finally the initiation of the general survey and revision of assessment throughout the Presidency engaged the attention of government at about this time, and it was thought that this was a fit time for investigating the tenures of rent free lands. Definite proposals were laid by the Madras Government before the Home Government for carrying out this object. The Court of Directors, after alluding to the difficult position in which the long delays that had taken place in investigating inam titles had placed the question and to the effect that these delays might have on the production of evidence, oral and documentary, directed that all inams enjoyed uninterruptedly since the introduction of the British rule, whether held under sanad or not, should be confirmed to their holders. The only cases which they considered could be resumed were those in which lands had been acqpired fraudulently or subsequent to the assumption of the country by the British, but even as regards them, they observed that indulgence should be shown when the actual possessors were not privy to the fraud by imposing on such inams a gradually increasing rate of assessment. The Court of Directors further observed that in view of the absolute security of property to be conferred a light assessment should be imposed in the nature of a jodi or quit rent on every inam confirmed to the incumbent for personal benefit and concluded that the investigation should be commenced with the least practicable delay and that it should be conducted by a distinct department to be established.[1] The Madras Inam Commission

1. *Man of Adminis.*, I. 166, 167.

was accordingly established on the 16th November 1858 during the administration of Lord Harris, and Mr. G. N. Taylor, who was appointed Commissioner, shortly after proceeded to Bombay to learn, by personal conference with the authorities there, the details connected with the working of the Inam Commission in that Presidency and with the proposed plan of treating inam tenures for the future. In his reports Mr. Taylor proposed certain modes of procedure the object of which was to carry on the necessary registration through the district revenue agency either under the orders of the Inam Commissioner or of a member of the Board of Revenue. While the subject was under consideration, Sir Charles Trevelyan arrived and assumed the Government of Madras. The first question that engaged his attention was the settlement of inams of this Presidency, and in his minute, dated 13th May 1859 he propounded certain rules by which the principles enunciated by the Court of Directors were to be practically applied by the Inam Commissioner in the investigation upon which he was about to enter. His scheme was of a more liberal nature than that previously proposed by the Madras Government. The agency that was originally appointed to conduct the investigation at the time of the inam settlement consisted of the Commissioner, two special assistants and a number of Deputy Collectors. It remained a separate department up to November 1869, when the bulk of the work having been completed, and under a pressing necessity for the reduction of the imperial expenditure it was resolved to abolish the department. The work which remained to be done was entrusted to a member of the Board of Revenue, who was appointed Inam Commissioner *pro formu* and to satisfy legal requirements.[1]

Procedure adopted by the Inam Commission.

As regards the procedure adopted by the Inam Commission in the investigation of titles into inam tenures, a proclamation was issued for the information of the inamdars setting

1. *Man of Adminis.*, I. 167.

forth the leading principles according to which the investigation into their titles was to be conducted and the various tenures settled by the Inam Commission. The detailed rules were also republished and circulated in the vernacular of the district and general notices issued to the inamdars of every village requiring their attendance at the Taluq station before the Deputy Collector by a certain date. Before the arrival of the Deputy Collector the Taluq Officer deputed for the purpose had a preliminary vernacular register of inams prepared and checked with the standard inam accounts. The village officers were also in attendance with the duplicate accounts in their possession. Every inamdar as he attended was required to file a statement giving particulars of his inam and of his claim thereto. Such statement was invariably attested by the village officers and usually in addition by two independent witnesses who were generally inamdars. The Deputy Collector before he commenced his inquiry was also furnished from the Collector's records with the standard inam registers and accounts of the Taluq from the earliest to the most recent period. All evidence was at once recorded in the English register by the Deputy Collector himself from verbal inquiry. The sanads and other documents produced by inamdars in support of their titles were inspected, noted on the English registers, attested, and immediately returned to the parties. When the registry was completed, the inamdar was informed of the rate and amount of quit rent charged on the inam for enfranchisement and his consent or refusal to enfranchise was recorded on the register. Then it was submitted to the Inam Commissioner for review and for the issue of a title deed. The ultimate object of the inam register was to determine whether or not the lands comprised therein were tax free. But the preparation of that register was a great act of state and the result of elaborate inquiries, and though the statement as to tenures set forth therein cannot displace actual and authentic evidence in individual cases,

Value of inam register.

it is entitled in the absence of such evidence to great weight.[1] It cannot vest in the grantee anything more than what had been originally granted,[2] and the object of the inam inquiry being simply with the object of investigating the title to land revenue free as belonging to institutions, the entry in the title deed that the dedication was for a specific purpose, *viz.*, the worship of the idol, is of no value when other evidence is available that the endowment was for the general purposes of the institution, as the inam proceedings themselves do not constitute dedication.[3] It carries no weight when the matter in dispute is a boundary dispute between the inamdar and his neighbour.[4] The entry in the inam register may be referred to as evidencing the history of the property and the terms on which it is held only in the absence of the original grant; and where such grant is available, the rights of the parties must be governed by the terms thereof, though the decision of the Inam Commissioner may help the court in arriving at a finding as to the practice of the institution and is not conclusive as to the meaning of the grant.[5] The inam statement is only a statement by a party to the inquiry before the Inam Commissioner and is merely an assertion of his alleged title before a tribunal which has to deal with it; and the recitals in the inam register are of greater value than the inam statement.[6]

The rules which are at present in force for the enfranchisement of inams are substantially the same as those which were made at the time of the inam settlement:—

(1) When it is proved that land has been for fifty years uninterruptedly in the possession of a person, or of those

1. *Arunachallam Chetty* v. *Venkatachalapathy Guruswamigal*, 43 Mad. 253 ; 46 I.A. 204 ; *Nachiappan* v. *Alagappa Chetty*, 13 L.W. 172 ; *Krishnamacharyulu* v. *Vijiasarthi*, 48 M.L.J. 467 ; *Dost Mahomed Khan* v. *Sayyeed*, 38 M.L T 248.

2. *Secretary of State* v. *Srinivasa Chariar*, 44 Mad. 421 (P.C)

3. *Vidya Varuthi* v. *Balusamy Ayyar*, 44 Mad. 831 ; 48 I.A. 302.

4. *Nachiappan* v. *Alagappa Chetty*, 13 L.W. 172.

5. *Jagga Rao* v. *Gori Bibi*, (1923) M.W.N. 348 ; *Dost Mahomed Khan* v. *Sayyeed*, 38 M.L.T. 248.

6. *Pir Batcha Sahib* v. *Rahimuddin*, 46 M.L.J. 245.

through whom he claims without the payment of land tax, with or without sanad, such length of possession is to be held as conferring a good title to that land as inam whatever may have been its origin. *Asal minaha gardens, pati peradus, harsal makta* lands, *badi bad* lands, and similar other lands which were enjoyed as *inams,* though they were not inams in their original nature were treated as *inams* for the purpose of enfranchisement. No title deeds, however, were issued for topes planted subsequent to 1848.

(2) When the title to inams based on length of possession is established, the holders of personal subsistence inams, whether hereditary or conditional in their terms, such as those granted for Brahmans and other classes for personal benefit, if they were the descendants of the original grantee, were allowed to convert their restricted tenure into a permanent freehold with unrestricted powers of alienation and upon reasonable terms in commutation of the reversionary right of government. If the holder of the inam refuses to accept the terms of the compromise, the inam is simply "confirmed", and is subject to all the restrictions implied in its tenure. Government prescribed certain higher rates for those who did not accept the offer of enfranchisement prior to 1875, but who were willing to enfranchise before the end of 1878; and no unenfranchised inam can now be enfranchised without the special sanction of government. But no option is given to the holder of a personal inam who is not the descendant of the original grantee or of the registered holder but who has acquired the inam by adoption, purchase, gift or otherwise. His title being defective, and the inam liable to resumption, enfranchisement is compulsory in his case. In other respects he is treated in the same way as a member of the original family.

Less than fifty years.

(3) Inams held for a shorter period than fifty years, if held on competent authority, are likewise to be recognised absolutely according to their terms or admitted to a compromise.

Religious and charitable inams.

(4) Inams granted for the support of religious and charitable institutions and for the performance of services connected therewith, whether held in the names of the institutions or of the persons rendering services therein are confirmed on their existing tenures and will endure only so long as the conditions of the grant are fulfilled, or the object for which they are held subsists. At the time of the inam settlement, full assessment was levied in cases where the institutions or the services for which the grants were made ceased to exist or to be performed, and if the inams were of a semi personal character, *i.e.*, if they were held by individuals both for their own subsistence and for rendering services which had been discontinued they were confirmed to such holders and enfranchised upon half assessment. *Dasabandham* inams were confirmed without any further interference so long as the terms of the grant are fulfilled and the works are kept in good order. Recent and fraudulently acquired inams were treated in the same way as (3).

Village and police service inams.

(5) Inams held for village, revenue, and police services were not dealt with at the time of the inam settlement but were simply recorded in separate registers pending a decision of the principles on which village establishments were to be revised and their emoluments regulated. Payment by monthly salaries and clubbing up of villages to form convenient ranges having since been decided upon, revised schemes of village establishments were introduced, and with the introduction of these, service inams were enfranchised by special officers under the direction of the Inam Commissioner on $\frac{5}{8}$ of the assessment. In the case of inams held by various descriptions of artizans for services due to village communities, they were confirmed on their present tenure at the time of the inam settlement. In the case of *tirwamanyams* if enfranchisement is applied, the occupying ryot or third person

continues to pay to the village servant in whose name the inam is enfranchised the full assessment, and the inamdar pays to government ⅝ of the assessment, keeping ⅜ to himself ; the ryot neither loses nor gains.

(6) Inams granted by zemindars and other landholders are dealt with as inams granted without authority as under (3). Government will resume inams excluded from the assets at the time of the permanent settlement on the same principles as other inams ; and it will not resume inams granted by a landholder subsequent to the permanent settlement, except in the event of the future reversion of the estate to it.

Redemption of quit rent.

In all cases an option was given to the inamdar to redeem the quit rent at any time by the payment of twenty times the amount ; and it was increased to thirty times the amount in the case of title deeds issued after 28—2—1895 ; but since the year 1896 redemption is no longer allowed. All excesses found in inams beyond an allowance of 10 per cent. were fully assessed unless such excesses were proved to be within the ordinary limits of the inam fields.

Inam title deed.

On the validity of the inam being established on the foregoing principles, a title deed is issued by the Inam Commissioner specifying the terms of the future tenure either by way of enfranchisement or confirmation, which is to secure its holder and his successors from any future scrutiny by government regarding the origin of the inam. The title deeds were issued by the Inam Commissioner on behalf of the Governor-in-Council and were not in accordance with the provisions of Statute 22 and 23 Vic. Chap. 41 under which they should have been executed by or on behalf of the Secretary of State for India in Council. They were found to be invalid, and for the purpose of validating them and those that may thereafter be issued, Statute 32 and 33 Vic. Chap. 29 was passed.

Bar of jurisdiction of civil courts removed.

As a result of the proceedings of the Inam Commission, Madras Act IV of 1862 was passed which exempted personal inams from the operation of Regulation VI of 1831, and declared that the title deed issued by the Inam Commissioner or an authenticated extract from his register or that of the Collector was to be deemed sufficient proof of such enfranchisement. Similarly with regard to service inams, Act IV of 1866 was passed which exempted enfranchised service inams from the operation of Regulation VI of 1831 precluding civil courts from taking cognizance of suits relating to such lands and declared that the title deed issued by the Inam Commissioner or an authenticated extract from his register or that of the Collector was to be deemed sufficient proof of such enfranchisement.

Enfranchisement.

Enfranchisement consists in giving up the reversionary rights of the crown in lands originally held on inam tenure on payment of an annual quit rent and converting them into ordinary heretable property. When a personal inam is enfranchised by the imposition of quit rent, the resumption consists of so much of the assessment or melwaram as is equivalent to the quit rent, neither the land nor the assessment in excess of the quit rent being resumed. In the case of service inams also, it is open to government to substitute a money salary as remuneration for the service and resume the inam in its entirety according as it may consist of melwaram alone or of both melwaram and kudiwaram. The enfranchisement consists in disannexing the inam from the office and imposing instead of the full assessment a quit rent which is equivalent to ⅝ of the full assessment.

Effect of enfranchisement. Personal inam.

As the title deed issued by the Inam Commissioner purported to confirm to the grantee the enfranchised land in freehold or as his absolute property, and doubts arose what was the interest actually conveyed under it,

Act VI of 1869 was passed, which enacted that the inam title deed was not meant to define, limit, infringe, destroy the rights of any description of holders or occupiers of land, or to affect the interest of any person other than the holder of the inam. Therefore, in the case of a personal inam the title deed issued by the Inam Commissioner is only evidence of the enfranchisement of lands previously held as inam, and the only effect of enfranchisement is to remove from the claimant the disabilities to sue in the ordinary courts. It does not operate as a resumption and regrant, and the real owner of the inam can sue for the recovery of the land from the person to whom the inam title deed has been issued.[1] In fact, the Privy Council in *Venkata Jagganatha* v. *Virabadrayya*[2] maintains the distinction between cases of enfranchisement in the case of personal, and in the case of service, inams.

Service grants.

As regards the effect of the enfranchisement of service inams, early Madras cases held that the person in whose favour enfranchisement was effected and title deed issued took the enfranchised inam land absolutely free of any claim by the members of the family from which the office-holders were selected. Later cases, however, held that the only effect of enfranchisement was to disannex the inam land from the office, that it did not alter the nature of the property in the hands of the grantee and that the other members of his family had an interest therein. Finally when the question arose before the Privy Council in *Venkata Jagganatha* v. *Virabadrayya*,[2] it has held agreeing with the early decisions and overruling the latter decisions that enfranchisement operates as a resumption and regrant and that the office-holder for the time being in whose favour

1. *Cherukuri Venkanna* v. *Lakshmi Narayana Sastrulu*, 2 M.H.C.R. 327.

2. 44 Mad. 643 : 48 I.A. 244.

enfranchisement is effected and title deed issued takes the property free of any claim by other members of his family.

Effect.

As the enfranchisement of a service inam is thus a resumption and regrant, it confers a new and absolute title. Therefore, when an enfranchisement is made in favour of a widow, she takes an absolute interest in the lands and not merely a widow's estate,[1] so that her heirs succeed to them, in preference to those of the previous holder[2]; and the fact that the title deed is issued along with others does not make any difference.[3] An enfranchisement made in favour of a stranger to the office and not the office holder[4]; in favour of a person who was in possession of lands constituting the karnam's emoluments and not the person who held the office of karnam, even though the latter has obtained a decree for possession against the former and has since the enfranchisement obtained possession, is valid.[5] It is not open to an aggrieved party to show that a name or names have been added in the title deed by mistake.[6] But it is open to him to show that at the time of enfranchisement the land was not inam land at all, or that he had before the date of enfranchisement acquired a title by adverse possession for 60 years as against government and thus deprived it of its power of

1. *Venkatarama Das* v. *Gavarraju*, 43 M.L.J. 153; *Venkatasubba Rao* v. *Adinarayana Rao*, 50 M.L.J. 46; *Palaniyandi* v. *Velayudam Pillai*, 52 Mad. 6.

2. *Venkatarama Das* v. *Gavarraju*, 43 M.L.J. 153.

3. *Venkatasubba Rao* v. *Adinarayana Rao*, 50 M.L.J. 45; *Palaniyandi* v. *Velayudam Pillai*, 52 Mad. 6.

4. *Ramakrishnayya* v. *Pitchayya*, 48 M.L.J. 500; *Krishna Sastri* v. *Singaravelu Mudaliar*, 48 Mad. 570.

5. *Venkata Rao* v. *Manga Rao*, 49 M.L.J. 71.

6. *Krishna Sastri* v. *Singaravelu Mudaliar*, 48 Mad. 570; *Gowri Kantam* v. *Ramamurthy*, 46 M.L.J. 482; *Ramakrishnayya* v. *Pitchayya*, 48 ML.J. 500, dissenting from *Lakshiminarasimham* v. *Venkataratnayamma*, 30 M.L T.(H.C.) 334.

enfranchisement in favour of any one.[1] It puts an end to all right or title to the property acquired before its date.[2] Where an inam title deed is granted in favour of certain persons, and one of them dies before it has been executed and signed by the Inam Commissioner, his heirs have no right under the title deed, and the words "your heirs" therein are words of limitation.[3]

Charitable inams.

Where the government resumes a charitable inam for non-performance of services, and grants a ryotwari patta to the inamdar, the resumption puts an end to the occupancy right acquired by ryots by grant or prescription prior to such resumption.[4] This view has been dissented from.[5]

Alienation. Personal inam.

As the enfranchisement of a personal inam does not operate as a resumption and regrant, and its only effect is the imposition of a quit rent, an alienation of a personal inam prior to enfranchisement is valid and it does not put an end to prior incumbrances.[6] Unenfranchised hereditary personal inams can be attached and sold in execution of a decree against the holder.[7]

Service inam.

But the alienation of a village service inam is declared unlawful by Regulation VI of 1831 and Act III of 1895 and is void, and the alienee

1. *Krishna Sastri* v. *Singaravelu Mudaliar*, 48 Mad. 570; *Gowrikantam* v. *Ramamurthy*, 46 M.L.J. 482; *Maniappa Udayan* v. *Sabapathy Asari*, 53 M.L.J. 515.

2. *Ramanna* v. *Venkatanarayana*, 52 M.L.J. 52.

3. *Chendramma* v. *Narasimham*, 52 M.L.J. 253. reversing *Narasimham* v. *Chendramma*, 49 M.L.J. 547.

4. *Subramania Ayyar* v. *Onnappa Goundan*, 39 M.L.J. 629; *Sadasivarayudu* v. *Venkatasami*, 62 M.L.J. 598.

5. *Venkatappa Charyulu* v. *Royappa Reddy*, 44 Mad. 550.

6. *Yerranna* v. *Kannamma*, 35 Mad. 704.

7. *Vissappa* v. *Ramajogi*, 2 M.H.C.R. 341; *Venugopala Rao* v. *Venkatanarasimha Rao*, (1911) 2 M.W.N. 394; *Venkatramier* v. *Chandrasekara Ayyar*, 44 Mad. 632; *Vaithinatha Ayyar* v. *Yogambal Ammal*, 50 Mad. 441.

cannot take advantage of the subsequent enfranchisement and claim the benefit of Section 43 of the Transfer of Property Act.[1]

Position of an enfranchised inamdar.

The holder of an enfranchised inam holds his lands subject only to the payment of the quit rent fixed on his lands. In *Venkata Jagganatha* v. *Virabadarayya*,[2] the title deed issued by the Inam Commissioner provides for the revision of quit rent at each periodical settlement, and unless so provided for, it cannot subsequently be revised.

Position of Inam Commissioner.

The Inam Commissioner is a deputy or agent of government for the purpose of the enfranchisement of inams,[3] and is an officer fully empowered to investigate the rights of inamdars and to recognise on behalf of government what rights are proved to exist in them.[4] He can sell the reversionary rights of the crown in accordance with the rules framed by government,[5] and his decision within the scope of his authority is binding upon it.[6] The presumption is that he did not transgress the rules made by government.[7] Any arrangement entered into between him and the zemindar,[8] or any statement made in the

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1. *Sannamma* v. *Radhabhai*. 41 Mad. 418; *Gopala Dasu* v. *Rami*, 44 Mad. 946.

2. 44 Mad. 643 : 48 I A. 244.

3. *Rama* v. *Subba*, 12 Mad. 98; *Sobhanadri Appa Rao* v. *Gopalakrishnamma*, 16 Mad. 34; *Secretary of State* v. *Kasturi Reddi*, 26 Mad. 268 (278).

4. *Sadasiva Ayyar, J.* in *Srinivasa Chariar* v. *Secretary of State*, 40 Mad. 268.

5. *Visappa* v. *Ramajogi*, 2 M.H.C.R. 341; *Rama* v. *Subba*, 12 Mad. 98; *Lutchme Doss* v. *Secretary of State*, 32 Mad. 456.

6. *Sadasiva Ayyar, J.* in *Srinivasa Chariar* v. *Secretary of State*, 40 Mad. 268.

7. *Lutchme Doss* v. *Secretary of State*, 32 Mad. 456.

8. *Sobhanadri Appa Rao* v. *Gopalakrishnamma*, 16 Mad. 34; *Suryanarayana* v. *Appa Rao*, 16 Mad. 40.

inam register,[1] will not prejudice the actual right of the inamdar. His duties are in no way judicial, and he has only to deal with those in possession of an inam on terms varying with the nature of the inam and cannot deal with the right of the persons entitled thereto;[2] nor is it within the scope of his authority to determine the relationship of the *melwaramdar* and the *kudiwaramdar*.[3] But any declaration or finding by him regarding the nature and extent of the inam will bind government.[4] The inam register embodies the conclusions of the Inam Commissioner on such inquiry as he chooses to make, and the presumption is that he made such inquiry.[5] The object of the inam register being to record the terms of the inam, the reference to rent payable by ryots is made only to exhibit material for assessing quit rent and the rate therein is the average rate.[6]

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1. *Rama Iyengar* v. *Jaganatha Pandiajiar*, 38 Mad. 155.
2. *Visappa* v. *Ramajogi*, 2 M.H.C.R. 341.
3. *Rama Iyengar* v. *Jaganatha Pandiajiar*, 38 Mad. 155.
4. *Sethumathava Chariar* v. *Secretary of State*, 1 L.W. 941; *Srinivasa Chariar* v. *Secretary of State*, 40 Mad. 268.
5. *Pir Patcha Saheb* v. *Rahimuddin*, 46 M.L.J. 245; *Krishnama Charyulu* v. *Vijayasarathi*, 48 M.L.J. 467.
6. *Andi Moopan* v. *Mohideen*, A.I.R. (1927) Mad. 226.

CHAPTER IX.

OCCUPANCY AND NON-OCCUPANCY RYOTS.
(UNDER THE MADRAS ESTATES LAND ACT).

Under the permanent settlement. Rights of ryots reserved.

We have seen that the Indian common law recognises only two interests in land, that of the sovereign, and that of the cultivator, and that the one is distinct from the other. At the time of the permanent settlement in 1802, government conferred proprietary rights on zemindars, ancient, as well as those created thereafter. In directing the introduction of the permanent settlement to Madras, *Lord Cornwallis* distinctly informed the Madras Government that the acknowledgment of the proprietary right in zemindars was not to be allowed in any respect to affect the rights of ryots, or others who had been subject to the authority of zemindars or other landholders; nor was it to be construed to preclude government from passing any laws or regulations which might occasionally be deemed expedient, for the protection of the rights of the ryots or of other persons, or for any other purposes, which might be deemed essential to the good government of the country.[1] The Board of Revenue in issuing instructions to the collectors for carrying out the permanent settlement stated, "Distinct from these claims, are the rights and privileges of the cultivating ryots, who though they have no positive property in the soil,[2] have a right of occupancy so long as they cultivate to the extent of their usual means, and give the sirkar or proprietor, whether in money or in kind, the accustomed portion of the produce."[3]

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1. *Fifth Report*, II. 50.
2. This view can hardly be maintained.
3. *Fifth Report*, II. 326.

Early Regulations.

In virtue of the right thus reserved, government passed on the same day Regulations XXV, XXVIII, and XXX of 1802 to regulate the mode and recovery of rent. Section 14 of Regulation XXV made it obligatory on the zemindar to enter into engagements with ryots for rent either in money or in kind *and grant them* pattas defining the amount and conditions of the engagement; and if he refused or neglected to comply with the demand for a patta, he might be cast in damages in a suit by the ryots. Regulation XXVIII empowered the zemindar to distrain and sell on account of arrears of rent only the crops, cattle and personal property of the defaulter, but not his land.[1] But when the arrears were not realised within a year, he might proceed to sell the tenure of the defaulter, if saleable.[2] Regulation XXX of 1802 provided for the exchange of pattas and muchalikas,[3] and prescribed penalties for non-issue of pattas.[4] *It prohibited the zemindar from* levying a new assessment under any name or pretence whatever,[5] and laid down two rules for determining the rate of rent, when it was disputed.[6] These Regulations proceeded on the footing that the ryot was entitled to possession of land as long as he paid the accustomed rent, and that the zemindar could not levy any new rent over and above it. The Sudder Court held that the effect of Regulation XXV of 1802 was only to confer upon zemindars such proprietary rights as belonged to, or was exercised by, government, and that it could not convey more without infringing the rights of others.[7] As, however, a doubt was felt, Regulation IV of 1822 was passed which declared that the provisions of Regulations XXV, XXVIII and XXX of 1802 were not meant to define, limit,

1. *Section* 2.
2. *Section* 34 (7).
3. *Section* 2.
4. *Section* 8.
5. *Section* 7.
6. *Section* 9.
7. No. 10 of 1813 (Sel. Dec. I. 70); No. 10 of 1814 (Sel. Dec. I. 90).

infringe or destroy the actual rights of ryots or landholders, but only to provide remedies for non-payment of rent, leaving them to recover their rights, if infringed, in the ordinary courts. The Regulations of 1802, while giving the zemindar a speedy and summary remedy, left the ryot to seek protection in civil courts. To remedy this, Regulation V of 1822 was passed. Under this Regulation primary cognizance of all suits was transferred to collectors who were vested with jurisdiction to intervene before a zemindar could sell distrained property or eject a ryot for arrears. The collector was to adjudicate whether the demand was justly due, and the rate in the patta which the ryot refused to accept was the just one prescribed. If the collector decided these points against the zemindar, the ryot could not be ejected, nor the tenure sold.

Act VIII of 1865.

These Regulations were repealed by, and their main provisions re-enacted with certain modifications and additions in Act VIII of 1865. This Act was mainly a consolidating and processual measure without defining the rights of landholders and ryots. In *Venkatramier* v. *Ananda Chetty*,[1] it was held that the tenancy of an ordinary pattadar was not one from year to year but enured so long as he paid the accustomed rent and could be determined only in the manner laid down by Act VIII of 1865. This decision was doubted in *Chockalingam Pillai* v. *Vaithilinga Pandarasannadhi* [2] in which it was held that the tenancy created by a patta enured only for the fasli for which it was in force, that neither the Regulations of 1802 or 1822, nor Act VIII of 1865 had the effect of extending it beyond that period and the ryot was liable to ejectment at the end of the fasli, unless he proved a custom to the contrary. The view enunciated in this case has

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1. 5 M.H.C.R. 120.
2. 6 M.H.C.R. 164 ; *Foulkes* v. *Rajaratna Mudaly*, 6 M.H.C.R. 175.

not been followed in subsequent cases.[1] They proceeded on the view that under the Indian common law the right of the ryot to possession of land arose from occupancy, and that the relation of landlord and tenant which connoted the idea of the latter deriving possession from the former did not exist between the zemindar and the ryot. The government having never claimed a right to possession of cultivated lands, its assignee, the zemindar, could not claim it. It was, therefore, held that the presumption was that a ryot in a zemindary was entitled to right of occupancy, and that it was for the zemindar to establish the circumstances giving him a right to eject. The principle of these decisions was extended in *Cheekati Zemindar* v. *Ranasooru Dhora*[2] to a case where the ryot obtained possession from the zemindar, and it was held that even then the former was entitled to right of occupancy, unless the latter proved a custom of the estate or a contract to the contrary. Thus right of occupancy was based on mere presumption liable to be rebutted in particular cases. The zemindars in the south who had comparatively been long under Hindu dominion generally conceded it. But in the Northern Sirkars which had long been under Mahomedan rule, right of occupancy had almost been effaced, and zemindars naturally denied it. The view put forward either in *Chockalingam Pillai* v. *Vaithilinga Pandarasannadhi*,[3] or the cases which dissented from it,[4] was only one of mere presumption liable to be rebutted in either case. But after the decision in *Chockalingam Pillai's case*, zemindars in the Northern Sirkars printed in thousands pattas

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1. *Innes, J*, in *Fakir Mahomed* v. *Tirumala Chariar*, 1 Mad. 205; *Srinivasa Chetty* v. *Nanjunda Chetty*, 4 Mad. 174; *Appa Rao* v. *Subbanna*, 13 Mad. 60; *Mahalakhmamma* v. *Ramajogi*, 16 Mad. 271; *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*, 20 Mad. 299; *Cheekati Zemindar* v. *Ranasooru Dhora*, 23 Mad. 318.

2. 23 Mad. 318

3. 6 M.H.C.R. 164.

4. See note (1).

in a stereotyped form containing a clause that they were at liberty to let the lands at their pleasure and made the ryots accept them. Such acceptance was relied on as a contract to the contrary to satisfy the second set of cases. It was thought that the circumstances under which ryots accepted them were such as to give them no room for free exercise of their will, since they did so either without realising the legal effect of such acceptance, or more often, to avoid the necessity of being ejected from their ancestral homes which would otherwise follow. It was, therefore, considered desirable that claim to occupancy should not be allowed to rest on mere presumption but be given a statutory basis. Accordingly the Madras Estates Land Act was passed for effectuating this object and also for defining the rights of landholders and ryots.

The Madras Estates Land Act.

The Madras Estates Land Act is the first enactment in this Presidency which defines the substantive rights and liabilities of landholders and ryots coming within its scope, and makes a general declaration of the existence of occupancy right in the ryot. It proceeds on the footing that his title to land arises from occupation and gives legislative sanction to the ancient Hindu Law doctrine. It also gives statutory recognition to the doctrine that government, or its assignee, the zemindar, is entitled only to a share of the produce, and not to possession of cultivated lands.

Ryoti land.

All lands in an estate to which the Act applies are broadly divided into two classes: (1) *ryoti* land which includes *old waste*, and (2) *private land*. In making this distinction the Act throws into prominent relief the component parts which from immemorial times go to constitute a village, first lands in the direct cultivation of the proprietor; second, lands occupied by tenants or ryots; and third, old waste lands over which by custom the landlord possessed certain specific rights now crystallised in the

statute.[1] The distinction between the two classes is maintained throughout the Act in respect of rights and liabilities acquired and incurred, and of the jurisdiction of the courts before which suits relating thereto are to be brought. *Ryoti* land includes all cultivable land in an estate, but not (1) private land, (2) tank beds, (3) communal lands, such as threshing floors, cattle stands, village sites and other lands which are set apart for the common use of the villagers, and (4) lands held on service tenure as long as it lasts.[2]

Tank bed.

The term tank bed appears to have been used to denote the area in the tank that is intended to hold the water necessary to irrigate the lands under its *ayakat*. It does not necessarily mean that the area should be actually under water.[3] Nor does it necessarily include all lands within the bund of the tank, since they comprise dry lands held on patta. Tank bed is often cultivated when the tank is dry or when there is no water in it for a number of years, but such cultivation does not render it *ryoti* land.[4] The allowing of such cultivation by the zemindar is not illegal.[5] But when tank bed has continuously ceased to be used for the storage of water and lost its character as such, it becomes ryoti land.[6]

Land held on service tenure.

Land held on service tenure as long as it lasts is excluded from the category of *ryoti* land, but becomes such as soon as services cease, whether it was created before, or subsequent to, the permanent settlement. *Ryoti* lands which are already in the possession of ryots cease to be such when they

1. *Sivaprakasa Pandarasannadhi* v. *Veerama Reddy*, 45 Mad. 586 ; 49 I.A. 286.
2. Section 3 (16). As regards private and communal lands, see *infra*.
3. *Boluswamy* v. *Venkatadri Appa Rao*, 47 I.C. 594.
4. *Ibid*.
5. *Chitravelu Servai* v. *Samanna Ayyar*, 35 I.C. 108.
6. *Narayanaswami* v. *Kamanna*, 51 I.C. 318 ; *Samayan Servai* v. *Kadir Moideen Rowther*, 51 I.C. 899.

become subject to service tenure. No formalities are necessary to convert lands held on service tenure into *ryoti* lands,[1] and if the landholder and the service tenant agree that the services need no longer be performed, or the services cease to be performed, the lands become *ryoti* lands. A distinction is made in the Act between service tenures created before the passing thereof and those created subsequent thereto. The former may be free of rent or on favourable rates of rent, but the latter must be free of rent in order that the lands subject thereto may be excluded from the category of *ryoti* lands. The object of the latter provision is to check the creation of nominal service grants and the withdrawal of such lands from the category of *ryoti* lands. When a village is granted on service tenure and the grantee lets tenants into possession of the land after the passing of the Act, though the grantee is a landholder and the land is in an estate, the tenants do not get occupancy rights because the land is excluded from the category of *ryoti* land.[2] The definition of *ryoti* land given in Section 3 (16) suggests the existence of *non-ryoti* lands which are not private lands.[3] *Ryoti* land comprises two descriptions of land : (1) *ryoti* land which is not *old waste, i.e., ryoti* land proper, and (2) *ryoti* land which is *old waste, i.e., old waste* proper. Section 23 raises a presumption in favour of *ryoti* land other than *old waste,* and Section 185 declares that land shall be presumed not to be private land, unless the contrary is proved. *Prima facie* all lands within the ambit of a zemindary must be deemed to be *ryoti* land, unless the zemindar shows that it is his *private land.*[4] *Zeroity* land is *prima facie ryoti* land,[5]

1. *Venkataramayya* v. *Veerasami*, 41 Mad. 554 ; *Zamindar of Tarla* v. *Barkivadu*, 44 Mad. 697.
2. *Sadasivarayudu* v. *Venkatasami*, 62 M.L.J. 598.
3. *Bolusami* v. *Venkatadry Appa Rao*, 47 I.C. 594.
4. *Narayanasami Naidu* v. *Bangarayya*, (1916) 2 M.W.N. 240.
5. *Narayanasami Naidu* v. *Venkayya*, (1910) M.W.N. 116, 282.

but does not necessarily mean land fit for agricultural purposes, as that term is often used in contradistinction to *inam* land.[1] Cultivable land is land permanently cultivable and not occasionally cultivated, and land fit only for pasturing cattle and not for ploughing or raising agricultural crops is not *ryoti* land.[2] Land which is not *per se ryoti* does not become such because it is let for pasturage, and the onus of proving that it is cultivable is on the person alleging it.[3] Dry pasture waste, if cultivable, though it had never in fact been cultivated, is *ryoti* land.[4] *Lanka* land is *ryoti* land.[5]

Ryot.

Ryot means a person who holds for purposes of agriculture *ryoti* land in an estate on condition of paying to the landholder the rent which is legally due upon it.[6] A person who holds *ryoti* land in an estate for the growing of plantations of timber or fuel trees, as casuarina, does not hold it for purposes of agriculture, and is not, a ryot.[7] So also a person who holds land for pasturage and not for raising agricultural crops is not a ryot[2]; similarly a purchaser from a ryot of land in his holding for the purpose of erecting a rice mill is not a ryot.[8] The policy of the Act is to improve the condition and confer new rights and privileges, especially upon the cultivators of *ryoti* lands, and it will be quite opposed to the policy of the Act to confer upon middlemen who sublet

1. *Maharaj Deo* v. *Dukko Podhana*, 31 I.C. 852 ; *Seshayya* v. *Raja of Pittapur*, 31 M.L.J. 214.

2. *Raja of Venkatagiri* v. *Ayyappareddi*, 38 Mad. 738 ; *Raja of Venkatagiri* v. *Rami Reddy*, 31 M.L.J. 211 ; *Seshayya* v. *Raja of Pittapur*, 31 M.L.J. 214 ; *Mallikarjuna* v. *Subbiah*, 39 M.L.J. 277 ; *Subbayya* v. *Venkataramiah*, 47 M. L. J. 469.

3. *Raja of Venkatagiri* v. *Rami Reddy*, 31 M.L.J. 211 ; *Ramanna* v. *Appa Rao*, A.I.R. (1929) Mad. 75.

4. *Naganna* v. *Pitchayya*, 52 Mad. 797 : 56 I.A. 346.

5. *Butchayya* v. *Parthasarathy Appa Rao*, 44 Mad. 856 : 48 I.A. 387.

6. Section 3 (15).

7. *Chandrasekhara Bharatiswamigal* v. *Duraiswamy Naidu*, 54 Mad. 900.

8. *Maharaj Deo* v. *Dukko Podhana*, 31 I.C. 852; *Venugopal Rice Mills* v. *Raja of Pittapuram*, 53 Mad. 367.

to occupying and cultivating tenants rights and privileges at all resembling those conferred on occupying cultivators and would result in depriving the latter class of the benefits intended to be conferred upon them. Therefore a lessee of *lanka* lands who does not cultivate them himself but lets to cultivating tenants is not a ryot.[1] It will be otherwise if he himself is the cultivating tenant.[2] Ijaradars and farmers of rent occurring in Section 6 (1) are not synonymous. They denote two classes of persons and if they are ryots at all, they are non-occupancy ryots and cannot be converted into ryots with permanent rights of occupancy.[3]

Occupancy right.

Section 6 (1) of the Act declares that every ryot who at its commencement is in possession of, or who subsequent thereto is admitted to possession of, *ryoti* land, not being *old waste*, situated in the estate of a landholder, shall have a permanent right of occupancy. The section does not affect any permanent right of occupancy acquired in land that was *old waste* before the commencement of the Act, and the explanation to the sub-section defines "every ryot in possession" to mean "a person who having held land as a ryot continues in possession of such land at the commencement of this Act." Passing of the Act and its commencement are not identical. The Act was passed on the date when it received the sanction of the Governor-General, *i.e.*, on 28th June 1908, but it came into force on the 1st July, and a person who gave up possession of land the day before the 1st July cannot claim the benefit of Section 6 (1).[4] But possession obtained and continued through fraud is not possession so as to give a right of occupancy.[5] The intention of the Act is not only to confirm existing

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1. *Butchayya* v. *Parthasarthy Appa Rao*, 44 Mad. 856 : 48 I.A. 387.
2. *Narayanaswamy Naidu* v. *Bangarayya*, (1916) 2 M.W.N. 240.
3. *Butchayya* v. *Parthasarathy Appa Row*, 44 Mad. 856 : 48 I.A. 387.
4. *Ganganna* v. *Vijayagopalaraju*, 31 M.L.J. 870.
5. *Bhoobunjay Acharjee* v. *Ramnarain Chowdary*, 9 W.R. 449.

occupancy rights but to confer them on cultivating tenants in possession of ryoti lands at the date of the commencement of the Act, even though they did not have such rights before. A person admitted to possession of ryoti land by the landholder subsequent to the passing of the Act also gets occupancy right. A person can claim right of occupancy (1) when he is in possession of ryoti land at the date of the commencement of the Act; (2) when, subsequent thereto, he is admitted to possession of such land by the landholder; (3) when he holds under a landholder as defined in the Act; and (4) when a non-occupancy ryot acquires that right under the provisions of Section 46 (1) of the Act. A person claiming a right of occupancy must show that he was in possession, actual or constructive, on the day of the commencement of the Act, *i.e.*, 1st July 1908,[1] and the benefit of the section will apply notwithstanding the execution of a muchalika by the ryot prior to the Act giving up his right of occupancy, in view of the new right given to him by the Act.[2] But a mere right to possession without actual or constructive possession will not give him the right.[3] The section does not destroy the right of occupancy that had vested in a person by prescription, and as the object of the Act is to regulate the relationship between the landholder and the ryot, a trespasser cannot as against the ryot claim the benefit of the section.[4] The Privy Council has recently held that the person who is in possession of *ryoti* land at the date of the commencement of the Act is entitled to a right of occupancy under Section 6, even if such possession is without the consent, or even against the will, of the landholder.[5] A person who is in possession of *ryoti* land

1. *Rangasamiengar* v. *District Board, Tanjore*, 21 M.L.J. 728; *Maharaja of Vizianagaram* v. *Ramabadriah*, (1912) M.W.N. 403; *Ganganna* v. *Vijaya Gopalaraju*, 31 M.L.J. 870; *Virabadrayya* v. *Revenue Divisional Officer, Polavaram*, 29 I.C. 8.

2. *Virabadrayya* v. *Revenue Divisional Officer. Polavaram*, 29 I.C. 8.

3. *Ganganna* v. *Vijayagopalaraju*, 31 M.L.J. 870.

4. *Maharaja of Vijayanagaram* v. *Ramabadraiah*, (1912) M.W.N. 403.

5. *Mallikarjuna Prasad* v. *Somayya*, 42 Mad. 400: 46 I.A. 44.

at the commencement of the Act on the expiry of the lease under which he came into possession is entitled to a right of occupancy;[1] so also when a decree for possession had been obtained by a landholder against the ryot, and the latter remained in possession of the land on that date. So also when a decree for ejectment had been passed under the Rent Recovery Act against the tenant, and an appeal was pending against that decree when the Act came into force, and the tenant remained in possession. The same view was held when the interest of the tenant in land had been purchased by the landlord but the former remained in possession,[2] but it has been dissented from.[3] The last case has apparently overlooked the very general observations made by the Privy Council in *Mallikarjuna Prasad* v. *Somayya*[4] already referred to. Once a landholder admits a person to possession of *ryoti* land, he cannot afterwards admit another and the position of the latter is that of a trespasser.[5] The benefit of Section 6 (1) is also applicable to such portions of the holding of a ryot which have been added thereto by encroachment, provided that he had been in possession for 12 years prior to 1st July 1908, when the Act came into force. But a tenant or sub-lessee under a ryot cannot claim the benefit of the section, even though the former was granted patta direct by the zemindar [6]; nor does the section affect the right to kudiwaram as between the rival claimants thereto.[7]

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1. *Malikarjuna Prasad* v. *Somayya*, 42 Mad. 400; 46 I.A. 44.

2. *Sivapada Mudaly* v. *Tyagaraja Chetti*, 27 M L.J. 665; *Markapulli Reddiar* v. *Thandava Kone*, (1914) M.W.N. 798.

3. *Venkatachalla Naidu* v. *Ethirajammal*, 44 Mad 220.

4. 42 Mad. 400: 46 I.A. 44.

5. *Doraisami Naidu* v. *Hussain Saheb*, (1924) M.W.N. 724.

6. Section 19; *Appayya* v. *Ramachandra Raju*, 27 M.L.J. 490.

7. *Sivapada Mudali* v. *Tyagaraja Chettiar*, 27 M.L.J. 665.

Exception to the acquisition of occupancy right.

An exception to the acquisition of occupancy right conferred by Section 6 (1) is made in certain cases :—(1) Admission to the occupation of *old waste* does not of itself confer occupancy right on the ryot. The landholder can let it on such terms as may be agreed upon between him and the ryot.[1] The only way the latter can acquire a right of occupancy is by adopting the procedure laid down by Section 46 ; (2) admission to waste land under a contract for the pasturage of cattle, or to land reserved *bona fide* by the landholder for forest under a contract for the temporary cultivation thereof. Such admission does not (*a*) confer upon the person admitted an occupancy right ; (*b*) entitle him to claim the benefit of Section 157 ; or (*c*) convert such land into *ryoti* land ;[2] (3) in the case of reclamation of waste land by the landholder by his own servants or hired labour, he can by a contract in writing prevent the acquisition of the right of occupancy for thirty years from the date of the first cultivation after reclamation.[3]

Ryoti land to remain intact.

The main object of the Act is to maintain the character of *ryoti* land unchanged, and for effectuating this object, the following provisions are made :—

(1) Where land held by a ryot with a permanent right of occupancy is surrendered or abandoned, or comes into the possession of the landholder, and the latter admits any person to possession of such land within ten years of such surrender, abandonment or coming into possession, the person admitted gets permanent right of occupancy therein.[4]

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1. *Section* 6 (3).
2. *Section* 6 (4).
3. *Section* 6 (5).
4. *Section* 6 (2).

(2) An ijaradar or farmer of land cannot, as such, acquire, except by inheritance or devise, an occupancy right therein ;[1] but a ryot with a permanent right of occupancy does not lose his right by becoming subsequently interested in the land as landholder or holding it subsequently in ijara or farm.[2] Where one of two co-ryots owning the entire occupancy right in certain lands purchases the melwaram interest in them, he does not lose his occupancy right.[3] So also a landholder in whom the occupancy right in certain government lands is vested, when he acquires the government interest therein.[4]

(3) A person in whom the entire interests of the landholder and the ryot in the land have become united either before or after the passing of the Act must hold it only as a landholder and not as a ryot without prejudice, however, to the rights of third persons.[5] This section applies only to the acquisition of occupancy rights by the landholder, but not to that of landholder's interest by the ryot,[6] and a person owing occupancy right in the land does not lose it by subsequently getting the interest of the landholder.[7] When a landholder purchases from the ryot the *kudiwaram* interest in the land, he must hold it as *ryoti* land and there is no merger of the two interests so as to extinguish the *ryoti* character of the land.[8]

(4) A person who is jointly interested in land as landholder and who has the right of occupancy transferred to him

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1. *Section* 6 (6).
2. *Ibid., Explanation.*
3. *Muthu Reddi* v. *Muthu Venkatapathy Reddi*, 31 M.L.J. 354.
4. *Zemindar of Sanivarappet* v. *Zemindar of South Vallur*, 39 Mad. 944. On appeal the Privy Council did not agree with the reasoning of the High Court and decided the case on another ground ; *Parthasarathi Appa Rao* v. *Satyanarayana*, 42 Mad. 355.
5. *Section* 8 (1).
6. *Muthu Reddi* v. *Muthu Venkatapathy Reddi*, 31 M.L.J. 354 ; *Zemindar of Sanivarappet* v. *Zemindar of South Vallur*, 39 Mad. 944.
7. *Manikyamba* v. *Mallayya*, 47 Mad. 942.
8. *Sivaramayya* v. *Chinna Muneappa*, 30 I.C. 812.

either before or after the commencement of the Act holds it subject to the payment of rent to his co-landholders, and when he lets it to a third person, the latter gets a permanent right of occupancy therein.[1]

(5) A landholder to whom the interest of a ryot in the holding has before the passing of the Act passed by transfer for valuable consideration otherwise than at a sale for arrears of rent, or has passed by inheritance, has the right of admitting for the period of 12 years from the passing of the Act or from the date of succession any person to the possession of the land on such terms as may be agreed upon between them, and the person so admitted cannot during such period claim the benefit of Section 46 (1).[2] Such land, however, does not become the private land of the landholder and the relation between him and the tenant is regulated by contract[3]; and

(6) When a ryot dies intestate in respect of an occupancy holding and leaves no heirs except the Crown, his right of occupancy is extinguished, but the land still remain *ryoti* land.[4]

Conversion of *ryoti* land into private land.

Though these provisions are enacted to keep *ryoti* lands intact, there is nothing to prevent the landholder from converting them into private lands by cultivating them as such ; but in such a case strong and unequivocal evidence is required.[5]

Landholder's rights.

Though the primary object of the Act is to give special privileges to the ryot, the landholder also gets some rights under it. They are :—

First charge.

(1) A first charge for rent and interest thereon not only upon the holding but also upon its produce, or any part thereof, provided that, if gathered,

1. *Section* 8 (2). 2. *Section* 8 (4).

3. *Veerappa Chetty* v. *Mudali*, 26 M.L.J. 373. 4. *Section* 10 (2).

5. *Sivaramayya* v. *Chinnamuneappa*, 30 I C. 812 ; *Wallis, C. J.* in *Zemindar of Chellapalli* v. *Somayya*, 39 Mad. 341 ; contra per *Seshagiri Ayyar, J.* in *ibid* ; *Mallikarjuna* v. *Subbiah*, 39 M.L.J. 277.

the produce is in the custody or possession of the ryot or deposited on the holding. or on threshing floors or treading ground, whether in the fields or within the homestead.[1]

Reservation of mining rights.

(2) A right to reserve mining rights on admitting any person to possession of *ryoti* land.[2]

Registration of improvements.

(3) A right to have the improvements effected by him registered.[3] Such registration is necessary to claim enhancement of rent on the ground of an increase in the productive powers of the soil by improvements made by the landholder,[4] and no enhancement can be granted unless it has been so registered.[5] An option is given to the Collector to reject an application for registration, unless it is made within twelve months from the date of the completion of the work.[6]

Premium.

(4) A right to receive premium when first admitting a person to the possession of *ryoti* land.[7] But after such admission the landholder cannot demand any payment beyond the established rent by way of premium or other consideration.[8] Such premium is not a charge on the land.[9]

The rights of an occupancy ryot are :—

(1) He cannot be ejected from the holding otherwise than in accordance with the provisions of the Act,[10] and the grounds of ejectment are given in Section 151. An occupancy

1. Section 5.
2. *Section* 7.
3. *Section* 16.
4. *Section* 30 (ii).
5. *Section* 32 (i) (*a*).
6. *Section* 16 (3).
7. *Section* 25; see *Narayana Patrudu* v. *Veerabadra Raju Bahadur*, 51 Mad. 228.
8. *Ibid*.
9. *Ibid*; Cf. *Venkatacharyulu* v, *Venkatasubba Rao*, 48 Mad. 821.
10. *Section* 9.

ryot is not liable to ejectment except on the ground that he has materially impaired the value of the holding for agricultural purposes and rendered it substantially unfit for such purposes. The landholder may sue for compensation in addition to, or in lieu of ejectment, for an injunction, or for the repair of the damage or waste with or without compensation.[1] He is not liable to ejectment for denial of the landlord's title.[2] A contract giving power to the landholder to eject otherwise than in accordance with the Act is invalid.[3]

Heretability and transferability.

(2) His right is heretable and transferable by sale, gift or otherwise.[4] Notwithstanding a contract to the contrary entered into by the ryot before the Act, he is entitled to compensation in respect of his occupancy right when his land is taken by government under the Land Acquisition Act.[5] The landholder is not entitled to object when the whole or a portion of the holding is transferred by the ryot, or when it is divided among co-sharers, provided that each sub-division is not less than five acres in extent, if unirrigated, and one acre in extent, if irrigated, or garden, and the distribution of rent among the sub-divisions is made by the landholder.[6] If the distribution of rent by him is unfair or delayed for an unreasonable time, the ryot can apply to the collector to make a fair apportionment, and the apportionment made by him is binding upon all the persons interested.[7]

Use of land.

(3) He may use the land in his holding in any manner which does not materially impair its value or render it unfit for agricultural purposes.[8]

1. *Section* 151.
2. *Subramania Chettiar* v. *Periaswami Thevar*, 26 M.L.J. 435.
3. *Section* 187 *(g)*.
4. *Section* 10 (1).
5. *Virabadrayya* v. *Revenue Divisional Officer, Polavcram*, 29 I.C. 8.
6. *Section* 145 (1).
7. *Section* 145 (2).
8. *Section* 11.

Right to trees.

(4) He has a right to use, enjoy and cut down all trees in his holding which are planted by him after the passing of the Act, or which naturally grow upon the holding, notwithstanding any custom or contract to the contrary. As regards trees which are in existence on the date of the Act, he has a similar right subject, however, to any right reserved to the landholder by custom or contract in writing executed by the ryot before the passing of the Act.[1] The right given by the section can be availed of also by an occupancy ryot admitted to the possession of *ryoti* land subsequent to the Act.[2] In dealing with the right of the landholder to trees, the Privy Council has pointed out that there may be three situations in which the trees are held,

(*a*) they may be growing on the land which is held by a ryot, though no mention of it is made in any lease;

(*b*) they may be growing on land held by a ryot, but they may be let as a separate entity in his lease; and

(*c*) they may be let to a person on whose land they do not grow,

and held that in the first class the Act applied, in the third class the Act did not apply but reserved its opinion as regards the second class.[3] There is no provision in the Act enabling the landholder to claim an enhancement of rent or any additional payment for trees the right to which he has lost by the operation of the act.[4] Where under a lease executed before the Act, trees are reserved to the landholder, he is entitled to them, not merely during the period of the lease.[5]

1. *Section* 12.
2. *Venkoba Rao* v. *Krishnaswamy Naicker*, 39 M.L.J. 493.
3. *Raja of Ramnad* v. *Kamid Rowthen*, 49 Mad. 335 : 53 I.A. 74.
4. *Naganna* v. *Pitchayya*, 52 Mad. 797 : 56 I.A. 346.
5. *Ibid.*

Improvements.

(5) He has a right to make improvements to his land. As between the landholder and the ryot desiring to make the same improvement, the latter has the preference unless it affects the holding of another ryot under the same landholder in which case, the landholder has the preference.[1] No enhanced rent can be claimed by the landholder on the ground of an improvement effected by him, unless it has been registered in accordance with the Act, or has been effected within fifteen years preceding its commencement.[2]

"Improvement" means with reference to a ryot's holding any work which materially adds to the value of the holding, which is suitable to the holding and consistent with the character thereof, and which, if not executed on the holding, is either executed directly for its benefit or after execution is made directly beneficial to it, and includes

(*a*) the construction of tanks, wells, water channels, and other work for the storage, supply or distribution of water for agricultural purposes;

(*b*) the construction of works for the drainage of land, or for the protection of land from floods or from erosion or from other damage by water;

(*c*) the reclaiming, clearing, enclosing, levelling or terracing of land and the preparation of land for irrigation;

(*d*) the erection of buildings on the holding or in its immediate vicinity, elsewhere on the village site, required for the convenient or profitable use or occupation of the holding; and the erection of dwelling houses for the ryot, his family and servants;

(*e*) the renewal, reconstruction, alteration or addition thereto, of any of the foregoing works;

(*f*) the planting of fruit trees and fruit gardens.[3]

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1. *Section* 13 (1), (2).
2. *Section* 32 (1) (*a*).
3. *Section* 3 (4).

When an improvement has been effected at the ryot's sole expense, he is not liable to pay a higher rate of rent on account of increased production, or of any change in the nature of the crop raised consequent on such improvement, notwithstanding any usage or contract to the contrary.[1] Temporary wells with whose help valuable crops were raised were held to be "improvements"[2]; and this decision has been dissented from, and it has been held that wells constructed by digging pits in sandy soil at a very small cost, in which underground and surface water naturally collects are not "improvements," in the absence of evidence that the market value of the holdings has gone up appreciably in consequence of the making of these pits.[3] Planting of cocoanuts is not planting of fruit trees and fruit garden within the meaning of Section 3 (*f*);[4] but the contrary also has been held.[5] A contract entered into between the landholder and the ryot before the Act for payment of a higher rate of rent for crops raised by the latter with the help of improvements made at his expenses is valid.[6] Long continued payment of a higher rate will raise a presumption of an agreement supported by consideration to pay at such rate.[7] But a landholder is not entitled to claim a higher rate of rent for wet crops raised by the ryot in consequence of improvements made at his own expense, on the strength of a contract made before the passing of the Act, but the improvements having been effected after the passing of the Act.[8]

Registration of improvements.

(6) He has a right to have evidence of improvements effected by him after the commencement of the Act recorded.[9]

1. *Section* 13 (3).
2. *Raja of Ramnad* v. *Meerasa Marakayer*, 50 I.C. 892.
3. *Vellayyappa Chettiar* v. *Subramania Chettiar*, 50 Mad. 482.
4. *Ibid.*
5. *Chayadevamma* v *Venkataswamy*, 62 M.L.J. 511.
6. *Varadachariar* v. *Ramudu*, 39 Mad. 84.
7. *Periakaruppa Mukkandan* v. *Raja of Ramnad*, 42 Mad. 475.
8. *Chokkalingam Chettiar* v. *Palani Ambalam*, 46 Mad. 712.
9. *Section* 17.

Temporary improvements.

(7) He is entitled to make temporary wells, water-channels, embankments, levellings, enclosures or other works or petty alterations or repairs to such works as are made in the ordinary course of cultivation.[1]

Reduction of rent.

(8) He is entitled to a reduction of rent in the circumstances and manner laid down in the Act.[2]

Demand for patta

(9) He has a right to call upon the landholder to issue a patta.[3]

Exclusive possession of crop.

(10) When rent is taken by appraisement of the standing crop, he is entitled to the exclusive possession of the crop;[4] and when it is taken by a division of the produce, he is entitled to the exclusive possession of the whole produce, until it is divided, but has no right to remove any portion of it from the threshing floor before it is divided,[5] and if he does, the produce will be deemed as full as the fullest crop on similar lands in the neighbourhood for that harvest.[6] He is also entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landholder.[7] The landholder has no right to enter upon the holding for the purpose of forming an estimate of the outturn.[8]

Repair of irrigation work.

(11) A ryot holding not less than a fourth of the rent of the ayakat under an irrigation tank can apply to the district collector to have it repaired.[9]

1. *Section* 18.
2. *Section* 38.
3. *Section* 50.
4. *Section* 73 (1).
5. *Section* 73 (2).
6. *Section* 73 (4).
7. *Section* 73 (3).
8. *Arunachalam Chettiar* v. *Mangalam*, 40 Mad. 640.
9. *Section* 135.

Relinquishment.

(12) He has a right of relinquishing his holding or a part thereof, not being less than a revenue field provided that the portion relinquished is accessible and provided that the apportionment of rent on the part retained is made by the landholder, subject to revision by the collector. In order to escape liability for the rent of the next revenue year, notice of relinquishment must be given before the first day of April preceding; and the retained part is thereafter treated as a new holding.[1] The right of relinquishment is given only to occupancy and non-occupancy ryots, and not to ryots of old waste bound by lease or other written agreement for a fixed period.[2] A relinquishment by a ryot does not extinguish the prior encumbrances created by him.[3]

Rent.

Rent, as defined in the Act, means whatever is lawfully payable in money, or in kind, or in both, for the use and occupation of land in his estate for the purpose of agriculture, and includes whatever is payable on account of the use and enjoyment of water supplied or taken for cultivation of land where the charge for such water has not been consolidated with the rent payable for the land. For the purposes of certain sections of the Act, rent includes also (1) any local tax, cess, fee or sum payable by a ryot in addition to the rent due in respect of land according to law or usage having the force of law and also money recoverable under any enactment for the time being in force as if it was rent, and (2) sums payable by a ryot as such on account of pasturage fees and fishery rents.[4] This definition does not require that the ryot should actually use the land for the purpose of agriculture, and therefore if he uses the land for any other purpose as for erecting buildings, or for no purpose at all, what he has to pay is rent, so long as his right to use it for

1. *Section* 149.
2. *Ibid.*
3. *Venkataramiah* v. *Lakshminarayana*, 45 Mad. 39.
4. *Section* 3 (11).

agricultural purposes subsists.[1] But a payment made by the purchaser of certain land in a ryot's holding under an agreement with the landholder that the land should not be used for agricultural purposes but should be used for putting up buildings is not rent.[2] The definition of rent includes whatever is payable not merely on ryoti lands or old waste or kammattam lands, but on any land whatever in the estate; and has reference only to something payable not as compensation or damages, but only by virtue of a contract;[3] and "payable" means payable according to the terms of the contract between the parties.[4] Section 143 prohibits landholders from exacting from their ryots anything in addition to the rent lawfully payable, and renders all stipulations and reservations for such additional rent void. In determining whether a particular payment is rent or not, it must be seen whether it is made as an incident of the tenure, *i.e.*, whether it forms part of the consideration for the ryot holding the land, or whether it has any direct or proximate bearing on the purpose for which the land is let.[5] Where such payment is paid out of the gross produce before division, it is legal as it may be taken that the payment of a common charge was taken into account in fixing the rent otherwise payable.[6] The tenant may plead exemption if he shows that the purpose for which the payment is made has ceased to exist, or that the landlord is not appropriating it to the purpose for which it is intended. But where the payment has no direct bearing on the purpose for which land is let and is paid out of the ryot's share of the produce, the landlord must establish that it is part of the consideration for which land was originally let or that it is supported by consideration subsequently.

1. *Appalasamy* v. *Maharaja of Vizianagaram*, 25 M.L.J. 50.
2. *Maharaj Deo* v. *Dukko Padhano*, 31 I.C. 862; *Venugopal Rice Mills* v. *Raja of Pittapuram*, 53 Mad 367.
3. *Venkatayya* v. *Krishnappa*, A.I.R. (1928) Mad. 340.
4. *Nokayya* v. *Bheemanna*, 45 M.L.J. 91.
5. *Deivanai* v. *Raghunatha Rao*, (1913) M.W.N. 886; *Ramasami Iyer* v. *Sundaram Iyer*, 30 I.C. 166; *Sundaram Iyer* v. *Theetharappa Mudaliar*, 40 I.C. 159; *Sevuga Pandia Thevar* v. *Sankaramoorthy Naidu*, 42 Mad. 197; *Venkatachallam Chetty* v. *Ayyamperumal Thevan*, 42 Mad. 702.
6. *Ibid.*

Mere length of payment will not make a cess which is purely voluntary or which is on its face illegal valid, but if it is of such a character that a legal origin to pay it may be inferred, payment for a length of time will be presumptive evidence.[1] A particular cess which has been incorporated with rent and collected along with it is binding.[2] Where a fixed *patom* (rent) has been fixed by the parties, it is not open to the tenant to contend that it includes certain items which are not legally recoverable and break the total rent and take exception to its component parts.

Charge for water.

The definition of rent includes charge for water supplied or taken for cultivation of land when it has not been consolidated with the rent payable for the land. But water flowing from one tank to another over the ryot's land without specifically benefitting cultivation is not water supplied or taken for cultivation.[4] When a ryot was paying to government water rate for water taken to his dry land, and subsequently under an agreement entered into between government and the zemindar lands for which the former was bound to supply water free of charge to the latter was localised, and thereafter he claimed it, it was held that he could.[5] *Wet*

Wet land.

land is entitled to supply of water free of charge, and no charge can be made for water taken to irrigate it from the tank under whose *ayakat* it lies. Where the system of division of produce subsists, the landholder will be entitled to a share of the produce, whether there is single or double crop cultivation. Where the system of fixed money rents for wet lands prevails, it may be that they have been fixed with reference to single or double crop cultivation. *Prima facie* the landholder is entitled to charge for

1. *Sevuga Pandia Thevar* v. *Sankaramoorthy Naidu*, 42 Mad. 197; *Venkatachallam Chetty* v. *Ayyamperumal Thevan*, 42 Mad 702: *Venkataramier* v. *Narayanasamier*, A.I.R. (1925) Mad. 1098.

2. *Deivanai* v. *Raghunatha Rao*, (1913) M.W.N 886.

3. *Sivanupandia Thevar* v. *Zemindar of Urkad*, 41 Mad. 109

4. *Ramaraja Thevar* v. *Velusamy Thevar*, 28 I C. 449.

5. *Appanna* v. *Yarlagadda*, 33 M.L.J. 355.

second crop cultivation in the absence of a custom or a contract to the contrary, and the onus of proving it is on the ryot. When on account of the non-repair of the tank, the ryot does not at all use the water therefrom and raises a dry crop, he is liable to pay the rate fixed for that crop.[1] But when once he uses the water of the tank, its sufficiency or otherwise for raising a wet crop is immaterial and the ryot becomes liable to pay the wet or other charge prevalent in the estate.[2] But if he raises dry crops on wet land when there is sufficiency of water in the tank for raising wet crops, he is liable to pay wet rate at the highest neighbouring waram rate.[3] *Dry*

Dry land.

land is not entitled to supply of water from the tank, and when water therefrom is taken for irrigating it, the landholder is entitled to a reasonable charge for water so taken, and it is not an enhancement of rent. The High Court has held that *nanja sarasari* is a reasonable charge for water so taken whether it was with or without the permission of the landholder, when such *sarasari* has been paid before.[4] *Nanja sarasari* means the average nanja yield and is ascertained by taking the total yield of all the *nanja* lands of the village for the year and dividing it by the actual extent under cultivation, and arriving at an average for an ordinary nanja measure of land. Such charge becomes leviable when water is once taken and does not depend upon its sufficiency or otherwise to raise a crop.[5] The landholder can charge for second crop cultivation on dry land.[6] When a ryot raises wet crops on dry land without

1. *Arunachallam Chettiar* v. *Mangalam*, 40 Mad. 640.

2. S.A. 1213 of 1915; S.A. 1679 of 1915; *Kanthimathinathan Pillai* v. *Subramania Nadan*, 39 I.C. 144.

3. *Arunachallam Chettiar* v. *Mangalam*, 40 Mad. 640; *Kothandarama Reddiar* v. *Chinnasami Reddiar*, 41 M.L.J. 455.

4. *Arunachalam Chettiar* v. *Mangalam*, 40 Mad. 640; *Venkatachellam Chetty* v. *Ayyamperumal Thevan*, 42 Mad. 702.

5. S.A. 1213 of 1915; S A. 1679 of 1915; *Kanthimathinathan Pillai* v. *Subramania Nadan*, 39 I. C. 144.

6. *Vaithinatha Sastrigal* v. *Sami Pandithar*, 3 Mad. 116; *Nagu Chetty* v. *Bhaskara Setupati*, (1911) 1 M.W.N. 6.

taking water from the landholder's tank, he is liable to pay only the rate fixed for the dry land.[1] A claim for rent calculated on the number of trees is valid.[2]

Liability to pay rent.

Section 4 of the Act enacts " subject to the provisions of this Act a landholder is entitled to collect rent in respect of all ryoti land in the occupation of a ryot." The Privy Council has now held that where there is a custom by which a ryot is relieved of rent in the case of land allowed to lie fallow, that custom is one of the conditions under which the ryot holds the land and that the operation of Section 4 is restricted to the extent to which the tenant by the custom is relieved of the rent.[3] Where the ryot allowed the land to lie waste, the onus will be on him to prove that the land was left waste through no fault of his,[4] but the contrary also has been held.[5]

Presumptions.

There are two presumptions raised in the Act as regards the rate of rent and the conditions of the tenancy, namely, (1) that the amount of rent and the conditions of the tenancy are the same as in the preceding year,[6] and (2) that the rate of rent lawfully payable by the ryot is fair and equitable, until the contrary is proved.[7] The ryot is bound to pay rent at the rate prevailing for similar lands in similar circumstances, and if it cannot be ascertained, at such rate as may be determined upon by the collector.[8] When

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1. *Nagu Chetty* v. *Bhaskara Setupati*, (1911) 1 M.W.N. 6.
2. *Palaniappa Chetty* v. *Raja of Ramnad*, A.I.R. (1928) Mad. 1254.
3. *Raja of Ramnad* v. *Mangalam*, 53 Mad. 597.
4. *Sadasiva Ayyar, J.* in *Ramaswamy Servaigaran* v. *Athivaraha Chariar*, (1918) M.W.N. 340; *Raja of Ramnad* v. *Perumal Moopan*, 63 M.L.J. 884.
5. *Raja of Ramnad* v. *Meerasa Marcoyer*, 50 I.C. 892.
6. *Section* 27 ; *Ibrahim Sahib* v. *Krishnaswami Naiker*, 24 L.W. 161 ; *Sundaram Ayyar* v. *Kulath Ayyar*, A.I.R. (1930) Mad. 61 ; *Radhakrishnier* v. *Sundarasami Ayyar*, 45 Mad. 475 : 49 I.A. 211 ; *Raja of Ramnad* v. *Mangalam*, 53 Mad. 597.
7. *Section* 28.
8. *Section* 25.

private land has been converted into ryoti land under a kadapa which fixed a certain rent, the ryoti is bound to pay that rent. *Faisal* rate is the proper rate and not the *jamabandi* rate. It is open to the landlord and the tenant to substitute a fixed money rent in lieu of a fluctuating waram, and such a contract is enforcible, even though the effect of it is that the rent is enhanced without the collector's sanction.[1] An implied contract to pay money rate in lieu of *waram* cannot be inferred where such payment is only temporary, or when different rates have been paid. Where a fixed patom had been settled between the parties, it is not open to the tenant to contend that it includes certain items which are not legally recoverable and break the total rent and take exception to its components.[2] Where a landlord agreed to collect from the tenant half the rent due for certain faslis and then filed a suit to recover the full amount, it was held that he could not, and that no consideration was necessary for such agreement under Section 63 of the Contract Act, as Section 26 of the Estates Land Act did not exclude the operation of the general law.[3]

When a landholder can question grants made by his predecessor

Grants of land for a period on favourable rents by a landholder will not bind his successor,[4] unless they are made,

(1) for clearing and bringing waste land into cultivation ;
(2) for making any permanent improvement ;
(3) for planting trees on the holding ; or
(4) under a contract made before the Act for any premium, loan or other valuable consideration,

so long as the ryot substantially fulfils the terms upon which, and the purposes for which, the favourable rates were allowed.[5]

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1. *Yerlagadda* v. *Ramaswami*, (1910) M.W.N. 686 ; contra, *Butchi Raju* v. *Seetharamayya*, 12 L.W. 86.
2. *Sivanupandia Thevar* v. *Zemindar of Urkad*, 41 Mad. 109.
3. *Vedachala Mudaliar* v. *Sivaperumal Mudali*, 16 M.L.T. 184.
4. *Section* 26 (3).
5. *Section* 26 (1).

After the expiry of the period for which they were made, or the terms upon which, and the purposes for which, they were allowed have not been substantially fulfilled, the landholder can claim the full rent.[1] A grant by a zemindar to a person of the right to cultivate for all time whatever extent of land he likes is not binding upon his successor. The onus of proving that a particular grant comes within the scope of Section 26 (1) is upon the person setting it up. Section 26 (3) only gives the landholder power to revert to the old rate and compels the Collector to decree it in a rent suit, and until it is done, the terms and conditions of the old patta constitute the contract between the parties.[2]

First charge.

Rent with interest thereon is a first charge not only upon the holding, but also upon the produce thereof, provided that the latter is in the custody or possession of the ryot or deposited on the holding, or on the threshing floor or treading ground, whether in the fields or within the homestead.[3] The first charge cannot be enforced by a civil court to which a decree for rent passed by a revenue court is sent for execution under Section 201 of the Act. Jodi is not rent and therefore not a charge. The ryot is bound to pay rent according to agreement or usage,[4] at the village office of the landholder.[5] If it is not paid on the day it falls due, it becomes an arrear[6] carrying interest at the rate of six per cent. per annum, until it is liquidated.[7] The ryot is entitled to a receipt for rent paid by him[8] in the form specified in Section 63.

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1. *Section* 26. (2).
2. *Srinivasa Iyengar* v. *Abdur Rahim Saheb*, (1917) M.W.N. 584.
3. *Section* 5.
4. *Section* 59.
5. *Section* 65.
6. *Section* 60.
7. *Section* 61.
8. *Section* 62.

Remission.

In the absence of proof as to the existence of a custom or contract, an obligation to grant remission for *shavi* owing to the non-repair of the irrigation source by the landlord is purely moral and not legal and cannot ~~not~~ be enforced by courts.[1]

Illegal cesses.

The landholder cannot collect anything beyond the rent lawfully payable by the ryot[2]; and if he does, is liable to pay a penalty not exceeding one hundred rupees, or double the value of the amount or value when it exceeds one hundred rupees,[3] in addition to the amount or value of what has been exacted; and all stipulations and reservations for such additional payment are rendered void.[4]

Trespasser.

When a trespasser obtains possession of ryoti land without the consent of the landholder which he has not acquired by inheritance or legal transfer, he is liable to pay the rent fixed upon the land, and if no such rent is fixed on it, at such rate as may be determined upon by the collector, and also damages in a sum not exceeding the rent so fixed or determined.[5] But if the landholder receives rent from him and does not sue to eject him within two years from the date of such receipt or first payment, he gets a permanent right of occupancy therein.[6] A landholder having once admitted one person as a ryot to the land has no right to admit another person to the same land, even though the landholder has issued a *sivaijama* patta to the other and received from him rent for one year.[7] He may eject him in a suit before the

1. *Thandavaraya Mudaliar* v. *Ramasamy Mudaliar*, (1859) Sud. Dec. 105; *Ramakrishna Sayanin* v. *Ranga Chariar*, 3 L.W. 300; *Jaganatha Mudaliar* v. *Audiah*, 6 L.W. 292; *Arunachallam Chettiar* v. *Mangalam*, 40 Mad. 640.
2. *Section* 143.
3. *Section* 144.
4. *Section* 143.
5. *Section* 45.
6. *Section* 6 (2), *Explanation*.
7. *Doraisami Mudaly* v. *Hussain Saheb*, (1926) M.W.N. 624.

civil court and recover the amount payable to him for rent.[1] If the landholder wishes to treat the trespasser as such and to recover mesne profits or damages from him, he must first apply to the collector under Section 45 to get the amount of the latter settled, and then bring a suit before the civil court under Section 163. If a ryot having been ejected occupies land or any portion thereof without the landholder's consent, he is liable on conviction by a magistrate to a fine which may extend to Rupees 500.[2] Such a conviction can be passed only if the decree for ejectment is passed under this Act and not if it had been passed before the Act came into force.

Enhancement of rent.

There is a specific provision in the Act that the rent of a ryot is not liable to enhancement, except in the manner provided therein.[3] Waram rates are not liable to enhancement, and in all cases of enhancement, the rent must be fair and equitable and must not exceed the value of the established waram.[4] But where the landholder and the ryot agree to substitute a money rent in place of a fluctuating waram, such a contract is valid, even though the effect of it is that the rent is enhanced without the collector's sanction. The contrary also has been held. The landholder can claim enhancement only in the following cases:—(1) when the land was let at a low rent for a term for the purpose of clearing and bringing waste lands into cultivation, or for the purpose of making any permanent improvement, or for planting or for any premium or valuable consideration, and when the term has expired, or the terms upon which, and the purposes for which such lower rent was allowed are not substantially fulfilled; (2) when, after the lifetime of the landholder, his successor seeks to enhance the rent on the ground that the land had been let on

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1. *Section* 163
2. *Section* 212
3. *Section* 24.
4. *Section* 35.

a low rent[1]; and (3) by suit in the case of lands paying a money rent[2], when

(*a*) during the currency of the existing rent there has been a rise in the average local price of the staple food crops in the taluq or zemindari division, if the rent is not permanently fixed, and the enhanced rent is not more than two annas in the rupee. The procedure to be followed by the Collector in such suits is laid down in Section 31. No such suit can be brought if within twenty years next preceding its institution, rent has been commuted, or enhanced, or a suit for enhancement has been dismissed on the merits[3];

(*b*) during the currency of the existing rent the productive powers of the soil have been increased by an improvement effected by the landholder. The procedure to be followed by the Collector in such cases is laid down in Section 32;

(*c*) works of irrigation or other improvements have been executed by government and the landholder has been asked to pay an additional revenue therefor. The procedure to be followed by the Collector in such cases is laid down in Section 33; and

(*d*) the productive powers of the land have been increased by fluvial action. The procedure to be followed by the Collector is laid down in Section 34.

If, in cases (*a*), (*b*) and (*d*), the Collector thinks that immediate enforcement of the decree for

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1. *Section* 26 (1) and (2).
2. *Section* 30.
3. *Section* 37.

enhancement will be attended with hardship to the ryot, he can direct a gradual enhancement in a period not exceeding five years.[1]

Reduction of rent.

The ryot may sue for the reduction of rent on the following grounds[2] :—(1) permanent deterioration of the soil without the fault of the ryot; (2) permanent failure of supply in the case of irrigated land, from the irrigation work on which it is dependent; and (3) fall in the average local prices of staple food crops, not due to temporary causes. When a decree has been passed in such a suit reducing the rent or dismissing it on the merits, no fresh suit can be brought within twenty years from the date of such decree.[3] A ryot is not entitled to a reduction of rent in cases where it has not been shown that the failure to supply water has taken place while the rent was as high as the present figure.

Commutation of rent.

Whenever rent is paid wholly or partly in kind, the ryot may sue before the Collector for commuting it into a money payment.[4] In such suit the Collector shall decide whether commutation shall be allowed, and if he allows commutation shall pass a decree declaring the sum to be paid as money rent in lieu of rent in kind or otherwise and the time from which commutation is to take effect.

In making the determination, the Collector shall have due regard to each of the following considerations,

(*a*) the average value of the rent actually accrued due to the landholder during the preceding ten non-famine years;

(*b*) the money rent payable by occupancy ryots for lands of a similar description and with similar advantages in the same village or neighbouring villages;

1. *Section* 36.
2. *Section* 38.
3. *Section* 39.
4. *Section* 40.

(c) improvements effected by the landholder or the ryot in respect of the holding. When it is thus commuted, it cannot either be enhanced for twenty years except on the ground of a subsequent alteration in the area of the holding or on the ground of improvements effected by the landholder or by government, or reduced for twenty years except on the ground of subsequent alteration in the area of the holding or of permanent deterioration of the soil, or of a permanent failure of supply from the irrigation source.[1]

A contract entered into at the time of commutation to pay special rates for certain kinds of crops is legal and binding.[2]

Remedies for recovery of rent.

Three remedies are open to the landholder for the recovery of arrears of rent from the ryot :—

(1) by a suit before the Collector,

(2) by distraint and sale of the moveable property of the defaulter, the growing crops or the produce of the land or trees in the defaulter's holding,

(3) by sale of the holding.

Defaulter.

The defaulter is the person who is the registered pattadar or his heir, or the person whom the landholder is bound to recognise under Section 146 of the Act[3] ; and where the latter does not take steps as provided for in the Act to get himself recognised in the place of the registered pattadar, any proceedings against the registered pattadar will bind the person really entitled to the land. Rent is payable in instalments according to agreement, and in the absence of such agreement according to established usage,[4] and an instalment of rent not paid on the day it

1. *Section* 41.

2. *Kadir Moidin* v. *Alagappa Chettiar.* (1911) 2 M.W.N. 394.

3. *Midnapore Zemindary* Co. v. *Muthappudayan*, 44 Mad. 534; *Irulappan Servai* v. *Veerappan*, 42 M.L.J. 113; *Prayag Dossjee* v. *Sarangapani Chetty*, (1923) M.W N. 193.

4. *Section* 59.

falls due becomes on the following day an arrear of rent. Arrear includes also interest due on the rent,[1] but no interest can be claimed on local cess paid by the landholder and sought to be recovered from an intermediate landholder,[2] nor on jodi.[3]

By suit.

Under the Estates Land Act a suit for rent is maintainable without the exchange of patta and muchalika. In cases not falling under Sections 25, 30 and 45 where a suit for the recovery of unascertained rent is brought, the court is bound as part of its duty to ascertain the rent payable and pass a decree for the amount.[2] Though there is no privity between the zemindar and the alienee from the ryot, the former can sue the latter for arrears of rent.[3] If, in a suit instituted by a landholder who has not been recognised as such by the collector for recovery of rent, his title is disputed by the ryot, no decree can be passed in his favour unless his title as landholder is recognised; and in dealing with such a case one of three courses is open to the court :—(1) it may itself determine the question in the suit whether or not the plaintiff is the landholder; (2) it may ask the plaintiff to apply to the collector under Section 3 (5) to recognise him as a landholder; or (3) it may apply as nearly as possible the provisions of Section 194. Where all the parties are before the court, the proper course for the court before which the suit is filed is to make the inquiry itself.

Distraint.

Distraint can be availed of only in respect of rent that has accrued due within the next preceding twelve months. But a landholder cannot distrain the moveable property of an

1. *Section* 61; *Vedachala Mudaliar* v. *Viraraghava Chariar*, 22 M.L.J. 219.

2. *Mallayya* v. *Gajapati Razu*, 21 L.W. 42; *Narayana Patrudu* v. *Veerabadra*, 51 Mad. 228.

3. *Parthasarathy Appa Rao* v. *Gangamma*, (1929) M.W.N. 141.

intermediate landholder for arrears of cess collected from the former.[1] The following articles are exempt from distraint, (1) the necessary wearing apparel, cooking vessels, bed and bedding of the defaulter his wife and children, and such personal ornaments as in accordance with religious usage cannot be parted with by a woman ; and (2) his ploughs and implements of husbandry, ploughing cattle, and manure stocked by the ryot or cultivator, and such seed grain as may be necessary for the due cultivation of the holding in the ensuing year.

Sale of holding.

When an arrear is not paid within the revenue year in which it occurred, the landholder can sell the holding, or a part thereof ; and for availing himself of this remedy he must, within one year from the end of the revenue year for which the arrear is due, send to the collector to be served on the defaulter through him a written notice stating the amount due for arrears, interest, and costs, if any, the period for which and the holding in respect of which it is due, and informing him that, if he does not pay the amount, or file a suit before the collector contesting the right of sale within 30 days from the date of the service of the notice, the said holding or a part thereof will be sold.[2]

Patta and muchalika necessary.

Unless there has been an exchange of patta and muchalika, remedies by way of distraint and sale of the moveable property of the defaulter or sale of his holding are not available.

Effect of sale.

When a holding or part thereof is sold for arrears due in respect thereof, the purchaser takes it subject to any right or interest which the ryot has created therein with the landholder's permission in writing registered, and subject also to any incumbrances created before the passing of the Act.[3] But a sale held under the provisions of the Revenue Recovery Act conveys the land to the purchaser free of all incumbrances existing over it.

1. *Lakshminarasimham* v. *Ramachandra*, 37 Mad. 319.
2. *Section* 112.
3. *Section* 125.

Pattas.

Ryots with a permanent right of occupancy and of old waste holding otherwise than under a lease in writing are entitled to demand pattas from the landholder for any current year, and are bound to give him muchalikas in exchange for pattas.[1] If a landholder fails to grant a patta within three months after demand, he may be sued before the collector for the issue of one;[2] similarly if a ryot fails to accept the patta tendered by the landholder and to execute a muchalika within a month after tender, he may be sued by the landholder for acceptance of patta.[3] A suit for patta will lie at the instance of a ryot only in respect of what is classed as ryoti land, and not in respect of land which is excluded from it. The right of suit given under Section 55 is not affected by the provisions of Section 146, and the fact that the landholder has recognized as ryot a person who is alleged to have no title to the land does not debar the real ryot from suing in the revenue court for a patta. In such a suit the revenue court will have to decide whether the claimant is a ryot and entitled to a patta.[4] The patta must contain the names of the parties, the local description and extent of the land, the rate or amount and nature of the rent payable, in money, in kind, or by a share of the produce, any local tax, cess or fee or charge payable along with the rent according to law or usage having the force of law, the period or periods at which such rent, local tax, cess or charge is to be paid, the date, and all special terms which may be agreed upon, and must be signed by the landholder. The muchalika may, at the option of the landholder, be a counterpart of the patta or a simple engagement to hold according to its terms and must be signed by the ryot.[5] The object of the patta is to enable the ryots to know the exact terms and

1. *Section* 50 (1), (2).
2. *Section* 55.
3. *Section* 56.
4. *Ramanathan Chetty* v. *Arunachallam Chetty*, 44 Mad. 43.
5. *Section* 51 (1).

conditions on which they are holding their lands in any particular fasli, and in cases of improper charges therein, to have reasonable notice of the same; and when there are material changes therein, a fresh patta must be issued. An extract given to the ryot under rule 25 of the rules framed under the Act by the settlement officer is not a patta complying with the provisions of Section 51.

Provisions of patta.

Section 51 (2) expressly provides that any stipulation in restraint of cultivation or harvesting by a ryot, or for the giving up of possession of land by an occupancy ryot at any specified time is void and of no effect. A clause in a patta providing for double assessment on poramboke lands encroached upon is bad[1]; so also is a provision for the payment of the whole of the local cess, instead of a half;[2] similarly a clause which provides that the landholder's charge shall extend even after the produce reaches the hands of a stranger[3]; similarly also a provision that the ryot shall relinquish the right of cultivation, if he cultivates the land without the landholder's permission;[4] so also a provision enabling the landholder to enter the holding to form an estimate of the outturn.[5] A provision that rent is payable if land is left waste through the fault of the ryot is valid.[6] A clause in a patta provided that, if the tenant carried away the crops contrary to its terms, he was to pay melwaram at so many kalams per veli, and the payment so provided is not a penal rent but a substituted one which may be

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1. *Rayapati* v. *Yerlagadda Mallikarjuna*, 7 I.C. 897.
2. *Jagganatha Bhupati* v. *Appalaswami*, (1914) M.W.N. 426.
3. *Ibid.*
4. *Mallikarjuna* v. *Subbayya*, 9 M.L.T. 443.
5. *Raja of Ramnad* v. *Mangalam*, 53 Mad. 597, affirming *Arunachallam Chetty* v. *Mangalam*, 40 Mad. 640.
6. *Nagu Chetty* v. *Bhaskarasami Setupati*, (1911) 1 M.W.N. 6; *Kadir Moideen* v. *Alagappa Chettiar*, (1911) 2 M.W.N. 394; *Ramasamy Servaigaran* v. *Adivaraha Chariar*, (1918) M.W.N. 341.

reckoned as a reasonable practical substitute for the actual percentage.[1]

How long in force.

Pattas and muchalikas may be exchanged for one or more revenue years, but it is not obligatory on the part of either the landholder or the ryot to tender or accept a patta for more than one revenue year.[2] The tender and demand for a patta and a muchalika must be made within twelve months of the commencement of the year to which they relate.[3] Pattas and muchalikas accepted, exchanged or decreed for any revenue year continue in force even after the expiry of that year, until fresh pattas and muchalikas are accepted, exchanged or decreed in any subsequent year, and where a patta or a muchalika has continued in force for more than one revenue year, no fresh patta or muchalika for the same holding takes effect until the commencement of the revenue year next succeeding that in which it is tendered, accepted, exchanged or decreed.[4] The word "decreed" is not confined to pattas decreed by any particular court and includes those decreed by a revenue court in proceedings taken under the Rent Recovery Act.[5] Where there is a patta for a particular fasli, the same will be deemed to continue in force for subsequent faslis also, unless the rent is reduced or enhanced by an application made under the Act.[6] This presumption is made not by the application of the doctrine of *res judicata*, but by the application of the special rule enacted in Section 52 (3). There need not be an exchange of patta and muchalika every year; and where a previous patta continues in force for the next year, the landholder can proceed by way of distraint or sale of the holding against the ryot; but he can do so only for the amount specified in the old patta. But in a suit for rent under Section 77 he can claim any rent he is legally entitled to, other than the rent

1. *Radhakrishnier* v. *Sundarasamier*, 45 Mad. 475 : 49 I.A. 211.
2. *Section* 52 (1).
3. *Section* 52 (2).
4. *Section* 52 (3).
5. *Radhakrishnier* v. *Sundarasamier*, 45 Mad. 475 : 49 I.A. 211.
6. *Ibid.*

mentioned in the old patta.[1] Where, however, the terms of the old patta have been changed by settlement proceedings in which waram rate has been converted into money rate, a new patta must be issued.[2]

Changes introduced by the Act.

Under the repealed Rent Recovery Act no proceedings could be taken, unless there was an exchange of patta and muchalika, or a tender of patta which the tenant was bound to accept, or such exchange had been dispensed with by the parties. This provision has been modified in the Estates Land Act which provides that they are necessary only if the landholder wants to proceed against the ryot by way of distraint and sale of his moveable property, or sale of his holding.[3] Therefore suits for rent are maintainable without the exchange of pattas and muchalikas.[4] Another change effected by the Act is that a patta which is not entirely, but only partially, correct is enforceable to the extent that it is correct,[5] and this sets at rest the conflicting decisions passed under the Rent Recovery Act. This provision applies not merely to suits for rent, but to distraint proceedings as well.

Non-occupancy ryots.

Non-occupancy ryots :—There is no definition of the term "non-occupancy ryots" in the Act; and those that are dealt with by it are (1) ryots admitted to occupation of old waste on such terms as may be agreed upon between them and the landholder [6]; (2) ryots admitted to waste lands under a contract for the pasturage of cattle, and to land reserved *bona fide* by the landholder for forest under a contract for the temporary cultivation thereof [7]; (3) ryots admitted to possession of

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1. *Foulkes* v. *Kandaswami Pillai*, 55 Mad. 994.
2. *Raja of Mandasa* v. *Jaganaikulu*, 56 M.L.J. 81.
3. *Section* 53 (1).
4. *Veerabadraraju* v. *Ganta Kumari Naidu*, 22 M.L.J. 451.
5. *Section* 53 (2).
6. *Section* 6 (3).
7. *Section* 6 (4).

land reclaimed by the landholder by his own servants or hired labour, for thirty years from such reclamation [1]; and (4) ryots admitted to possession of lands which had come into the possession of the landholder, either by transfer for valuable consideration before the passing of the Act otherwise than at a sale for arrears of rent, or by inheritance, for twelve years from the passing of the Act.[2]

Their rights.

A non-occupancy ryot is entitled (1) in due course of husbandry to reclaim, clear, enclose, level, terrace, or remove silt from his holding, and to construct, maintain, and repair a well for the irrigation of the holding with all works incidental thereto, but not to make other improvements without the permission of the landholder;[3] and (2) to call upon the landholder to confer upon him occupancy right on payment of a sum equal to two and a half times the annual rent payable in respect of the land together with the cost of preparing any instrument required for that purpose, except in cases falling under classes 2 to 4 above.[4] If within one month after such demand and tender, the landholder fails to confer upon the ryot permanent right of occupancy, the latter can apply to the collector who, after notice to the former and hearing him, may execute the instrument conferring on the ryot permanent right of occupancy, and such execution by the collector has the same effect as execution by the landholder.[5] The right to apply to the collector is conferred only upon non-occupancy ryots, and the power of the collector to execute an instrument is subject to the same limitation.[6] For purposes of Section 46 a receiver of an estate is not a landholder, and therefore proceedings for the compulsory acquisition of

1. *Section* 6 (5).
2. *Section* 8 (4).
3. *Section* 14.
4. *Section* 46 (1).
5. *Section* 46 (3).
6. *Madura Devasthanam* v. *Kondamu Naicken*, 23 M.L.T. 352.

occupancy right cannot be taken as against him.[1] So also a person who has been appointed manager of a devasthanam on account of the suspension of the previous incumbent, which suspension has been found invalid by a civil court is not a landholder.[2] A contract between a ryot of old waste and the landholder whether made before or after the commencement of the Act restricting his right to acquire the status of an occupancy ryot is void.[3]

Grounds of ejectment.

A non-occupancy ryot can be ejected only on any of the following grounds,[4] (1) that he has used the land in a manner which renders it unfit for the purposes of the tenancy; (2) that a decree for arrears of rent in respect of the holding passed against him or any person whose legal representative he is remains unsatisfied at the expiry of the revenue year following the one in which the decree was passed; (3) that he has refused to pay a fair and equitable rent determined under Section 49; (4) that without the permission of the landholder he has mined or quarried or excavated gravel or clay for profit within his holding; and (5) that he has been admitted to the occupation of the land under a registered lease for a term exceeding five years and that the term of the lease has expired. There is a proviso to this section which was added by Section 8 of Act IV of 1909 which provides that nothing in the section shall affect the liability of the person who is a non-occupancy ryot to be ejected on the ground of the expiry of the term of the lease granted before the Act. The scope of the proviso was the subject of a conflict of opinion, and this conflict has been set at rest by the decision of a Full Bench which has held that Section 153 is exhaustive of the grounds on which a non-occupancy ryot can be ejected but it did not oust the jurisdiction of the civil court to entertain suits in ejectment

1. *Saminatha Odayar* v. *Sundaram Iyer*, 44 Mad. 274.
2. *Nallakakkan Ambalam* v. *Kallalagar Devasthanam*, 49 M.L.J. 628.
3. *Section* 188.
4. *Section* 153.

on other legal grounds, *e.g.*, the expiry of the term of one year under which the land was let under the provisions of Section 8(4), the landholder owing the kudiwaram also.[1] The grounds of ejectment apply only to non-occupancy ryots under the Act, and not to those before the Act who have since acquired the right of occupancy under Section 6 (1).[2] Suits for ejectment can only be brought before a revenue court.

Old waste.

Old waste is a creation of the legislature and is a species of waste. The term as defined in the Act is rather a misnomer. Ten year old waste will better describe what is meant, and even this will not be satisfactory as in some cases it is not necessary to show that the land was waste for ten years.[3] This provision regarding old waste was introduced at a late stage of the Bill at the direction of the Secretary of State as a concession to landholders who objected to the creation of occupancy right in land which had long been waste which they claimed as their private property. *Old waste* as defined in the Act comprises three descriptions of land :[4]

(1) *ryoti* land which at the time of letting by the landholder has been owned and possessed by him or his predecessor in title continuously for a period of not less than ten years, and had remained during that period continuously uncultivated; such period of ten years being wholly before, or partly before and partly after the passing of, the Act, but not commenceing before July 1888 (*i. e.*, 20 years before the passing of the Act). This clause covers the case of letting where the period is before, or

1. *Govinda Naidu* v. *Chengalvaraya Naidu*, 47 Mad. 896; *Ganpat Rao* v. *Sitamma*, A.I.R. (1928) Mad. 960.

2. *Muthukrishna Yachendra* v. *Raju Chetty*, (1914) M.W.N. 496.

3. *Wallis, C. J.* in *Venkataratnam* v. *Varadaraja Appa Rao*, 40 Mad. 529, overruling 29 M.L.J. 184.

4. *Section* 3 (7).

partly before and partly after, the Act. "At the time of letting" means the particular letting which is in dispute and not the first letting by the landholder. Thus a land was not cultivated before 1901 and was leased to a stranger for five years ending with June 1906. It was thereafter leased by the plaintiff to the defendant for three years ending with June 1909. On the defendant refusing to surrender the land after the expiry of the lease, the plaintiff brought a suit for ejectment and damages. It was held that the land was not *old waste*, but *ryoti* land, and that the defendant had acquired occupancy right under Section 6 (1) and was not liable to be ejected.[1] So also if waste land was brought into cultivation by the landholder with his own servants and hired labour in 1898 and let for the first time to a tenant in 1899 or any year thereafter without a contract in writing. According to *Wallis, C. J.* the word "letting" in the case of non-occupancy ryots has got the same meaning as admission in the case of occupancy ryots;[2] but in view of the special significance attached to the term admission, *Spencer, J.* construed the word letting to mean the time of leasing or executing the lease;[3]

(2) *ryoti* land which at the time of any letting by the landholder after the passing of the Act remained free from occupancy right within a continuous period of not less than ten years immediately prior to such letting. Under this clause it is

1. *Venkataratnam v. Varadaraja Appa Rao*, 40 Mad. 529; overruling 29 M.L.J. 184.

2. *Ibid.*

3. *Ganganna v. Vijiagopala Rasu*, 31 M.L.J. 870.

immaterial whether the land was cultivated or not, whether it was cultivated by hired labour or by the landholder's servants, or whether it was let to tenant from time to time so long as he did not acquire occupancy right under the provisions of the Act. There can be any number of lettings as *old waste* under this clause, while under clause (1) there can be only one letting as *old waste* ;

(3) *ryoti* land in respect of which a civil court has before the Act finally declared the non-existence of occupancy right, and no such right has been acquired subsequent thereto. The words "final decree..." do not imply that the decree should contain these words *ipsissima verba*, but it is enough if the decree in effect states that the ryot has no occupancy right.[1]

Presumption of old waste.

Section 23 raises a presumption in favour of *ryoti* land other than *old waste*, and being an exception to the acquisition of occupancy right, the onus of proving that the land is *old waste* is upon the person setting it up.[2] To find out whether land is *old waste* or not at the time of the passing of the Act, a definition which says that land shall be considered *old waste* at the time of letting after the passing of the Act, if certain conditions are fulfilled, cannot be resorted to, because Section 6 at once applied on the passing of the Act, and when once occupancy right is vested in the ryot at the time of the passing of the Act, the land ceases to be *old waste*[3].

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1. *Narasimham* v. *Sabhanbadri*, 52 M.L J. 632.
2. *Rama Reddy* v. *Karpi Sivaga*, (1913) M.W.N. 971 ; *Gangamna* v. *Vijiagopalarazu*, 31 M.L.J. 870 ; *Sarvarayudu* v. *Venkataraju*, 38 Mad. 459.
3. *Sarvarayudu* v. *Venkataraju*, 38 Mad. 459.

Enhancement of rent.

The ryot of *old waste* comes under the category of *non-occupancy* ryot, and therefore all the provisions of the Act applicable to the latter apply to the former also. The rent of a ryot of *old waste* can be enhanced only when (1) it is not fixed by an agreement in writing; (2) the tenancy is one from year to year; or (3) when he holds over after the expiry of the year.[1] On his failure to agree to the enhanced rent, he is liable to be ejected.[2] The grounds of ejecting a ryot of *old waste* are the same as in the case of a *non-coccupancy ryot.*[3] Section 154 provides for compensation for improvements made by him before ejectment.

Ejectment.

Compensation to ryots.

Where a ryot, whether occupancy or non-occupancy, has before the date of ejectment sown or planted crops on the land, he is at the option of the landholder entitled either (1) to remain in possession of the land for the purpose of tending and gathering in the crops, or to receive compensation for the estimated value of the labour and capital spent by the ryot, or (2) when he has only prepared the land for sowing, but has not sown or planted crops on that land, to receive the estimated value of the labour and capital spent by him; but not to remain in possession or receive any compensation, if he has cultivated or prepared the land contrary to local usage;[4] and when he is allowed to remain in possession, he must pay for such use and occupation rent at which the holding was held.[5]

Record of rights.

The Local Government may, in respect of an estate or portion thereof, make an order directing that a survey be made and a record of rights prepared by a revenue officer when,—

1. *Section* 47.
2. *Section* 49.
3. *Section* 157, as to which see *ante* pp. 231—232.
4. *Section* 155.
5. *Section* 156.

(1) in its opinion the preparation of such record is required to secure the ryots or the landholder in the enjoyment of their or his legal rights, or is calculated to settle or avert a serious dispute existing or likely to arise between the ryots and their landholder; or

(2) the estate is under its management, or under the superintendence of the Court of Wards; or

(3) (*a*) the landholder or ryots; or

(*b*) not less than one half of the total number of landholders; or

(*c*) not less than one-fourth of the total number of ryots,

applies or apply.[1]

Publication of order.

A notification in the Official Gazette of such an order is conclusive evidence that it has been duly made;[2] and the record of rights is to be prepared in accordance with the rules prescribed by the Local Government, and may, if it so directs, include a record of all rights and obligations of each ryot and landholder in respect of—

(1) the use of water by the ryot for agricultural purposes, whether obtained from a tank, well, or any other source of supply;

(2) the repair and maintenance of works for securing a supply of water for the cultivation of the land held by each ryot, whether or not such works be situated within the boundaries of such land.[3]

Particulars in the order.

The order directing the preparation of a record of rights under Section 164 must specify the particulars to be recorded therein and include some or all of the following, namely—

1. *Section* 164 (1).
2. *Section* 164 (2).
3. *Section* 164 (3).

(*a*) the name of each ryot's landholder and of each landholder in the estate or portion thereof;

(*b*) the name of the ryot, and whether the ryot is an occupancy or a non-occupancy ryot, or where there is no ryot, the name of the occupant;

(*c*) the situation, extent and one or more of the boundaries of the land held by the ryot;

(*d*) whether the land is irrigated, unirrigated or garden land, and if irrigated, whether double or single crop;

(*e*) the rent lawfully payable at the time of the preparation of the record;

(*f*) how the rent has been fixed, whether by decree or under the Act;

(*g*) any rights lawfully incident to the holding;

(*h*) if the rent is a gradually increasing rent, the times at which and steps by which it increases;

(*i*) whether rent is actually paid or not, when the land is claimed to be held free of rent;

(*j*) the record of irrigation rights.[1]

Preliminary record.

The revenue officer after making such inquiry as he thinks fit will prepare a preliminary record for the estate or part of it and will publish a draft thereof in the prescribed manner and for the prescribed period and consider any objection to any entry therein, or any omission therefrom which may be made during the period of the publication.[2]

Final record.

When such objections have been considered and disposed of, the revenue officer finally frames the record and publishes it in the prescribed manner.[3]

1. *Section* 165.
2. *Section* 166 (1).
3. *Section* 166 (2).

Settlement of rent.

If, within two months from the date of the final publication of the record of rights, either the landholder, or ryots holding not less than one-fourth of the total extent of the holdings in the village applies or apply, the revenue officer, if the Local Government so directs, will settle a fair and equitable rent in respect of the land.[1] In making this settlement, (1) he will presume, until the contrary is proved, that the existing rent or rate of rent is fair and equitable;[2] (2) he can propose to the parties such rent or rate of rent as he considers fair and equitable; and if the parties agree to it, it may be deemed as the fair and equitable rent;[3] (3) where the parties agree among themselves as to the amount of rent, the revenue officer, if satisfied that it is fair and equitable, will record it as the fair and equitable rent; and if not satisfied will himself determine the fair and equitable rent.[4]

Preliminary settlement record.

The revenue officer will thereafter prepare a record showing the name of the landholder and the ryot, the extent of the holding and such other particulars as the Local Government may direct, and the amount of rent settled therefor, and will publish it in the prescribed manner and for the prescribed period, and will receive and consider any objection thereto during the period of publication.[5]

Final settlement record

After considering the objections, if any, the revenue officer will submit the final settlement record to the confirming authority appointed by the Local Government,[6] who may sanction the settlement with or without amendment, or return it for revision.[7] After it has been sanctioned by the confirming authority, it

1. *Section* 168 (1).
2. *Section* 168 (2).
3. *Section* 168 (3).
4. *Section* 168 (4).
5. *Section* 169 (1).
6. *Section* 170 (2).
7. *Section* 170 (2).

will be incorporated in the record of rights published under Section 166 (2), and the record of right as so amended will be republished in the prescribed manner and will be conclusive evidence that a record has been duly made.[1]

Remedies.

Any person aggrieved

(i) by wrong statements made in the record under Section 165,

(*a*) may prefer objections under Section 166, or

(*b*) may sue for a declaration under Section 179; and

(ii) by wrong entries under Section 168,

(*a*) may prefer objections under Section 199, or

(*b*) may appeal against the order on such objections to a superior revenue authority under Section 171, or

(*c*) may move the Board of Revenue for a revision,

(*d*) may sue for rectification of the entry under Section 173.

Private land.

Private land is defined in Section 3 (10) to mean the domain or homefarm land of a landholder by whatever designation known, such as kambattam, khas, sir, or pannai. Section 19 provides that except, as provided by the Act, the relations between the landholder and the tenant of private land are not regulated by the provisions of the Act. A suit for the ejectment of such a tenant can be brought only in a civil court. The tenant of private land has no right of occupancy, nor can he ask the landholder to confer upon him that right. The landholder can convert his private land into ryoti land and confer occupancy right on the tenant,[2] and when it is done under a kadapa fixing a certain rent, the ryot is bound to pay that rent

1. *Section* 170 (3).
2. *Section* 181.

and not a fair and equitable one laid down in Section 25.[1] There is difference of opinion whether ryoti land can be converted into private land before the Act.[2] Private land includes land technically known as private land and also land that had been cultivated as private land for twelve years before the date of the commencement of the Act by the landholder himself, by his own servants or by hired labour with his own or hired stock.[3] Waste land, if cultivated as above, becomes private land. The test to be applied in determining whether land is private land or not is to see whether the landholder has cultivated it himself and intends to retain as resumable for cultivation by himself, even when he from time to time demises it for a season.[4] If any question arises whether any land is private land or ryoti land, it is to be presumed to be the latter unless the contrary is proved, and the onus of proving that it is the former is on the person setting it up.[5] When in any suit or proceeding it becomes necessary to determine whether any land is private land, regard must be had to local custom and to the question whether the land was before the 1st day of July 1898 specifically let as private land and to any other evidence that may be produced.[6] There is difference of opinion whether evidence of letting as private land after 1st July 1898 is admissible.[7] *Savaram* lands are

1. *Ramajenndra* v. *Yellappa*, 39 M.L.J. 565.

2. Can, *Virabadrayya* v. *Zemindar of North Vallur*, 50 Mad. 201; *Wallis, C. J.* in *Zemindar of Chellapalli* v. *Somayya*, 39 Mad. 341; *Napier, J.* in *Venkataramayya* v. *Lakshminayana* 45 Mad. 39; cannot, *Seshagiri Ayyar, J.* in *Zemindar of Chellapalli* v. *Somayya*, 39 Mad. 341; *Mallikarjuna* v. *Subbiah*, 39 M.L.J. 277; *Sadasiva Ayyar, J.* in *Venkataramayya* v. *Lakshminayana*, 45 Mad. 39.

3. *Section* 185; *Rama Reddy* v. *Kripa Sivaga*, (1913) M.W.N. 971.

4. *Zemindar of Chellapalli* v. *Somayya*, 39 Mad. 341; approved of by the P. C. in 42 Mad. 400: 46 I.A. 44; *Mallikarjuna* v. *Subbiah*, 39 M.L.J. 277.

5. *Section* 185.

6. *Ibid.*

7. Admissible, *Appu Rao* v. *Kaveri*, (1918) M.W.N. 171; inadmissible, *Lakshmayya* v. *Varadaraja Appa Rao*, 36 Mad. 168; Cf. *Chintam Reddy Sanyasi* v. *Appala Narasimha Razu*, (1914) M.W.N. 765.

not necessarily private lands.[1] The merger of occupancy right in the landholder under sub-sections 1 and 2 of section 8 does not convert *ryoti* land into private land;[2] nor does merger under sub-section 4 of that section. The Local Government, either of itself or on the application of the landholder may ascertain and record his private land, and in so doing, the revenue officer is directed to disregard any agreement contained in any compromise or decree proved to his satisfaction to have been obtained by fraud or collusion and not to register any land as private land unless it is proved to be such by satisfactory evidence of the nature prescribed in Section 185.

Remedies against tenants of private land.

When a tenant of private land has no saleable interest therein and the rent is in arrears at the end of the year and there is no sufficient distress to satisfy the demand, the landholder can apply to the collector to enter upon and take possession of the premises,[3] which is to be effected in the manner laid down in Sections 159 and 160. The defaulter's right and interest in them cease on such delivery of possession, if he does not bring a suit in the civil court to set aside those proceedings. The landholder can also, when pattas and muchalikas have been exchanged between him and the tenant, proceed by way of distraint and sale of the moveable property of the defaulter for arrears due to him.

Communal lands.

Communal lands such as threshing floors, cattle stands, village sites, and other lands situated in any estate which are set apart for the common use of the villagers cannot be used or assigned for any other purpose by the landholder without the written order of the collector, subject to such rules as may be made by the Local

1. *Lakshmayya* v. *Varadaraja Appa Rao*, 36 Mad. 168.
2. *Section* 8 (3).
3. *Section* 158.

Government in this behalf.[1] Any land so set apart by the landholder after the permanent settlement reverts to him, if it is not in the opinion of the collector required for any communal purpose.[2] But his right over tank beds in the estate is not affected by this provision.[3] There is no presumption that any *poramboke* land in a zemindary is of such a character that it could lawfully be cultivated or given out for cultivation by the zemindar. In the case of communal lands not forming part of an estate as defined in section 3 (2) of the Act, the landholder is entitled to evict tenants let by him into possession, even if it is classed as village site, but in ordinary communal lands forming part of an estate, he could not bring a suit for ejectment. Any person occupying communal land is liable to be ejected in a suit before the collector under the provisions of the Madras Land Encroachment Act (III of 1905) within thirty years of such occupation,[4] and the provisions of sections 10 to 14 of that Act dealing with appeals from the orders of the collector are made applicable to orders by the collector in such cases.[5]

Jurisdiction of civil court.

The jurisdiction of the civil court is ousted if the land in respect of which the suit is brought is ryoti land in an estate, or the person bringing it is a landholder. An estate is defined in section 3 (2) of the Act, and in dealing with what is comprised under it, it will be convenient to deal with the classes of estates dealt with in section 3 (2), clauses (*a*), (*b*), (*c*) and (*e*), and that dealt with in clause (*d*). The first class comprises :—

Clause (*a*).

(1) a permanently settled estate or a temporarily settled zemindary. For the purpose of bringing a case under the former provision, a settlement must be effected formally and there should be some recorded evidence of it. Where certain government lands in

1. *Section* 20.
2. *Ibid, explanation.*
3. *Section* 20, *proviso*
4. *Section* 21.
5. *Section* 22.

another district in which a zemindar had kudiwaram interest were transferred to him at his request in lieu of monetary compensation payable to him in respect of certain lands in his zemindary which were taken by government under the provisions of the Land Acquisition Act, and thereafter those lands were described as zemindary lands in the land register of the collector, and there was no formal settlement of those lands with the zemindar, nor was there any sanad, the Privy Council held that the lands were not a permanently settled estate, nor part of such estate.[1] A grant of waste lands by the zemindar to which section 11 of the Rent Recovery Act applied and which was recognised by government as a minor estate is not an estate;[2]

Clause (b).

(2) any portion thereof which is separately registered in the office of the collector. This clause has reference to cases of alienation which have been separately registered in the office of the collector under the provisions of Regulations XXV and XXVI of 1802, and Act I of 1876;

Clause (c).

(3) an unsettled palayam or jagir. The adjective "unsettled" qualifies not merely palayam, but jagir as well;[3] and according to *Ramesam, J.* this interpretation will give a wider meaning to the term which was not intended by the legislature and will bring all unenfranchised inams under the heading unsettled jagir.[4] Jagir is only a species of inam, though all inams are not jagirs.[5] There is no warrant for limiting the term jagirs used in this clause only to those granted before the advent of the

1. *Parthasarathy Appa Rao* v. *Satyanarayana*, 42 Mad. 355 : 41 I.A. 38.
2. *Baptist Missionary Society* v. *Ratnakara Patro*, (1911) 2 M.W.N. 517.
3. *Ramaswamy Goundan* v. *Tirupati Goundan*, 50 Mad. 10.
4. *Ramalinga Mudaliar* v. *Ramasamy Ayyar*, (1929) M.W.N. 239.
5. *Ibid*; *Sam* v. *Ramalinga Mudaliar*, 40 Mad. 664.

East India Company;[1] and the mere use of the term jagir will not conclude the matter.[2] In this Presidency some jagirs have been permanently settled under the provisions of Regulation XXV of 1802, and some jagirs have been enfranchised by the inam commissioner under the inam rules. The term jagir appears to have been used in this clause in its primary sense, meaning a grant of land or land revenue, usually for life or a number of lives, and in some cases, hereditary, for performance of some public service, such as the maintenance of troops and the like, or as rewards for services rendered to the state, usually military. When the granting authority designated a grant as a jagir and every government officer having had to deal with it subsequently adopted the same nomenclature, it may be taken as showing that it is really a jagir, as used in this clause.[3] A grant to *M* "as jagir for three generations" as "the person who rendered help to the government of the Honourable East India Company" which was designated from the very beginning by all government officers as a jagir and which was not settled under Regulation XXV of 1802 nor enfranchised under the inam rules is an unsettled jagir and is therefore an estate under this clause.[4] So also is the estate known as the Mafooskhanpet jagir which is a jagir granted by the Nawab of the Carnatic to his brother for the purpose of perpetuating his name and which was treated in government accounts and by private parties as a jagir.[5] A grant of a village made by the Nawab of the Carnatic in the 18th century to a lady member of his family for maintenance, though described as a jagir and unsettled either under the permanent settlement Regulation or the inam rules in which the grantee

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1. *Ramaswamy Goundan* v. *Tirupati Goundan*, 50 Mad. 10.
2. *Ibid*; *Sam* v. *Ramaswamy Mudaliar*, 40 Mad. 664.
3. See, *Tirupati Goundan* v. *Ramasamy Goundan*, 50 Mad. 10; *Ramalinga Mudaliar* v. *Ramasamy Ayyar*, (1929) M.W.N. 239; *Chockalingam Chettiar* v. *Kolagiri Munigan*, A.I.R. (1930) Mad. 569.
4. *Tirupati Goundan* v. *Ramasamy Goundan*, 50 Mad. 10.
5. *Chockalingam Chettiar* v. *Kolagiri Munigan*, A.I.R. (1930) Mad. 569.

held both warams is not an estate falling under this clause;[1] so also is the estate known as the *Arya Goundan Jagir*.[2] A resumed jagir is not an estate;[3]

Clause (e).

(4) any portion consisting of one or more villages of any of the estates mentioned in (1), (2) and (3) above which is held on a permanent undertenure.[4] A pre-settlement inam of one village or more whose assets have been included in the assets of the zemindary at the time of the permanent settlement comes under this clause as being held on a permanent undertenure.[5] But a pre-settlement inam whose assets have been excluded from the assets of the zemindary ceases to be part of that zemindary, and is not an estate.[6] A subsequent inam of a whole village held on a permanent undertenure falls under this clause.[7]

Clause (d).

The second class of estates is with reference to inams and is dealt with in clause (*d*). An inam is an estate when the land revenue alone of a village has been granted to a person not owning the kudiwaram thereof, provided that the grant has been confirmed or recognized by the British Government. This applies only to the time when the grant was made; and therefore when at the date of a srotriyam grant the melwaram and kudiwaram had been granted but at the time of the suit the grantee had only the melwaram, it is not an estate.[8] The exception to section 8 introduces a provision in favour of the inamdar that, where before or after the

1. *Sam* v. *Ramalinga Mudaliar*, 40 Mad. 664; *Ramalinga Mudaliar* v. *Ramaswamy Ayyar*, (1929) M.W.N. 239
2. *Thanappa Chetty* v. *Esuf Khan*, 23 L.W. 36.
3. *Seshayya* v. *Subba Rao*, 25 I.C. 61.
4. *Clause* (*e*).
5. *Lakshminarasimham* v. *Virabadrudu*, (1924) M.W.N. 244; *Veerasami* v *Kantayya*, 51 M.L J. 394; *Narayanasami* v. *Thimayya*, (1930) M.W.N. 945.
6. *Virabadrayya* v. *Venkanna*, 24 M.L.J. 659; *Sanyasi Naidu* v. *Venkatacharyulu*, 26 M.L.J. 258; *Varahaliah* v. *Suryanarayana*, (1923) M W.N. 732; *Nokayya* v. *Bheemanna*, 45 M L.J. 91.
7. *Bhujanga Rao* v. *Periathambi Goundan*, 92 I.C. 1047.
8. *Subbayya* v. *Srinivasa Rao*, 49 M.L J. 126.

commencement of the Act, the kudiwaram interest in the land is acquired by him, such land ceases to be part of an estate. Where the inamdar acquires the kudiwaram interest of only certain, and not all the lands, in a village, or where the person entitled to the kudiwaram interest purchases the inamdar's right to land revenue in the lands, they do not cease to form part of the estate.[1] The exception to section 8 applies to cases in which a person who is already an inamdar acquires the kudiwaram right.[2] When one of the inamdars acquires the kudiwaram interest in all the lands of a village, it is still an estate, and the term inamdar in the exception to section 8 means the owner of the entire interest in the inam.[3]

Meaning of "acquired."

The exception to section 8 provides that, where the kudiwaram right in the land is acquired by the inamdar, such land ceases to be part of an estate. There was a difference of opinion regarding the meaning of the word "acquired," whether it included a case of acquisition by surrender and abandonment, and a Full Bench has held that it does.[4]

Grant to a person not owing the kudivaram.

To render an inam an estate, the inam must have been granted to a person not owing the kudiwaram thereof. Prior to the decision of the Privy Council in *Suryanarayana* v. *Potanna* the generally accepted view of the High Court was that the presumption in the case of an *inam* was that it was a grant of land revenue; and there were two divergent views on the question of the further presumption whether it was granted to a person not owing the *kudiwaram*. According to one view there was no such presumption, and the onus was on the tenant to show that the kudiwaram was not vested in the landholder,

1. *Varadaraja Appa Rao* v. *Kuruvana*, 30 M.L.J. 249.
2. *Ibid.*
3. *Rajachari* v. *Manager, Tirumugoor Devasthanam*, 41 Mad. 724.
4. *Subbarayadu* v. *Ramaswami*, 49 Mad. 620.

and therefore in the absence of any admission or proof that the latter did not own the kudiwaram, civil courts had jurisdiction to entertain suits for rent. According to the other view, unless the landholder showed that the kudiwaram had been granted to him, civil courts had no jurisdiction and revenue courts alone had. The Privy Council has held that there is no presumption that an inam is only a grant of land revenue, and civil courts will have jurisdiction to entertain suits relating to inams, unless it is shown that there were tenants in existence at the time of the grant possessing rights of occupancy by custom or otherwise.[1] There was a difference of opinion in the High Court regarding the construction to be placed on the decision of the Privy Council, whether the presumption was that there was a grant of kudiawram also, or whether there was no presumption at all. The Full Bench agreed with the former view and held that the onus was on the tenant to show that the grant was of land revenue alone.[2] But the decision of the Full Bench has been disapproved of by the Privy Council in *Sivaprakasa Pandarasannadhi* v. *Veerama Reddi*[3] in which it has been held that in the case of an inam there is no initial presumption to start with and that each case must be decided on its own facts having regard to the evidence and circumstances therein. So that an inamdar suing in ejectment must prove his right to eject.

Landholder.

A landholder is defined to mean " a person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor-in-title or of any order of a competent court, or of any provision of law."[4] In the case of a dispute

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1. *Suryanarayana* v. *Potanna*, 41 Mad. 1012 : 45 I. A. 209; *Venkata Sastrulu* v. *Seetharamudu*, 43 Mad. 166 : 46 I.A. 123.

2. *Muthu Goundan* v. *Perumal Iyen*, 44 Mad. 588.

3. 45 Mad. 586: 49 I.A. 286 ; *Seethayya* v. *Somayajulu*, 52 Mad. 453 ; 56 I.A. 146.

4. *Section* 3 (5).

between two persons, or between joint landholders as to which of them is the landholder, the collector is to recognize one of them as a landholder for the purpose of this Act, and his order is subject to any decree or order that may be passed by a competent civil court.[1] The order of the collector not being thus given finality need not be set aside within one year, and a suit for a declaration that the plaintiff is the landholder is maintainable without a prayer for further relief.[2] Though both the mortgagor and the usufructuary mortgagee are landholders within the first part of the definition, the usufructuary mortgagee is the person that should be recognized as landholder for the purposes of the Act.[3] The term "landholder" as defined in the Act is wider than the holder of an estate.[4] There was a difference of opinion whether minor inamdars were "landholders" within the meaning of the Act, and a Full Bench has held that he is.[5] Similarly a person who was the owner of an estate at the time when arrears accrued but ceased to be such at the time when the suit was filed is still a landholder, and even a bare assignee of an arrear of rent from the owner of an estate or part thereof can be a landholder for the purpose of pursuing the remedies under the Act.[6] But a person who was already the owner of kudiwaram and to whom the zemindar granted the melwaram is not a landholder.[7]

1. *Section* 3 (5).
2. *Vannisami Thevar* v. *Chellasami Thevar*, (1921) M W.N. 193.
3. *Subramania Pethannar* v. *Muthiah Chettiar*, (1915) M W.N. 157.
4. *Appala Narasimhulu* v. *Sanyasi*, 38 Mad. 33.
5. *Brahmayya* v. *Achiraju*, 45 Mad. 716; *Lakshminarasimham* v. *Veerabadradu*, (1924) M.W.N. 244; *Suryanarayana* v. *Bullayya*, 52 M.L.J. 323.
6. *Venkata Lakshmanna* v. *Achireddi*, 44 Mad. 433.
7. *Veerasamy* v. *Venkatrayudu*, 39 M.L J. 225; *Manikyamba* v. *Mallayya*, 47 Mad. 942.

CHAPTER X.

MALABAR LAND TENURES.

Malabar Tenancy Act.

The Malabar Tenancy Act (XIV of 1930) has placed on a statutory footing the rights and liabilities of landlords and tenants in respect of the tenures dealt with by it, and I have given under the heading "Statute Law" those rights and liabilities; and under the heading "Customary Law," I have dealt with the other tenures prevalent in Malabar.

STATUTE LAW.

Janmi.

A landlord is a person under whom a tenant holds and to whom he is liable to pay rent or michavaram, and includes a janmi,[1] who is the person entitled to the absolute proprietorship of the soil.[2] An

Intermediary.

intermediary is one, who, not being a janmi, has an interest in land, and is entitled, by reason of such interest, to possession thereof, but has transferred such possession to others.[3]

Provisions regarding landlord.

The main provisions enacted in the Act regarding the landlord are:—

Fixing extent of holding.

(1) An immediate landlord or his cultivating verumpattamdar may apply to the court to fix the extent of the holding, the fair rent in respect of it, the instalments, if any, by which it is payable and the date or dates when the fair rent or its instalments are payable.[4]

Right to advance.

(2) He may, at any time, by notice in writing, call upon his cultivating verumpattamdar, at the latter's option

(*a*) to pay one year's fair rent of the holding in advance; or

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1. *Section* 3 (*o*).
2. *Section* 3 (*k*).
3. *Section* 3 (*j*).
4. *Section* II.

(*b*) to furnish security for the said fair rent; or

(*c*) to pay a portion of the said fair rent in advance and furnish security for the balance.[1]

To receive renewal fee.

(3) He is entitled to a renewal fee for renewal from a customary verumpattamdar,[2] a kanomdar,[3] and a cultivating kuzhikanamdar.[4]

Revision of rent.

(4) At any time after the expiry of twenty years from the date of an order fixing the fair rent, or from the date of the last confirmation or revision of such fair rent, an immediate landlord can apply for revision of the fair rent from his cultivating verumpattamdar.[5]

Renewal fee and arrears of rent, first charge.

(5) Renewal fees and arrears of michavaram or rent together with interest, if any, thereon payable to a landlord are a first charge on the holding, which charge has priority over all other charges, except the charge for revenue and any dues payable to government or to any local authority and made a charge thereon by any law for the time being in force.[6]

Sale of kuzhikanam holding.

(6) A landlord who has obtained a decree for eviction in respect of a kuzhikanam, can, in execution of that decree apply for sale of the holding specified therein and of the improvements in respect of which compensation is awarded under that decree, and for the payment to him of the balance of the sale price after deducting the amount of the said compensation.[7]

Surrender of holdings.

(7) He is not bound to accept surrender of a holding from a kanamdar, kuzhikanamdar or a customary verumpattamdar who has obtained a renewal, or a cultivating verumpattamdar,

1. *Section* 13 (1).
2. *Section* 16.
3. *Section* 17.
4. *Section* 18, 19.
5. *Section* 30 (1).
6. *Section* 41.
7. *Section* 42 (1).

unless notice of the surrender has been given in writing to him three months prior to the expiry of the agricultural year, and the surrender is in respect of the entire holding, and the whole of the arrears of michavaram or rent is also tendered to him at the time of the surrender. He is not bound when accepting the surrender to refund the kanartham, or to pay the value of the improvements which he would otherwise have to pay under the Improvements Act.[1]

Receipt.

(8) He is bound to give a receipt to the tenant for the rent paid to him containing the particulars mentioned in the section.[2]

Place of payment.

(9) Rent, when it is payable in kind, is, in the absence of a contract to the contrary, to be delivered at his granary in the village in which the holding is situated, or at such other granary within three miles of the village as may be provided in that behalf by him.

Rights to which Act not applicable.

(10) Nothing in the Act affects his right in any of his holdings—

(*a*) to make irrigation channels, footpaths, roads and ways into adjacent and other holdings ;

(*b*) to work laterite and other quarries, and

(*c*) to cut and remove the trees or to enjoy the usufruct of trees and pepper vines belonging to him :

Provided that the tenant is entitled to a proportionate reduction of michavaram or rent if by the exercise of such right his profits are decreased.[4]

Rent.

Rent means whatever is lawfully payable in money or in kind or in both, to a person entitled to the use or occupation of a land, by another, permitted by the person so entitled, to have the use or occupation of the said land, on the understanding, express or implied, that the

1. *Section* 44.
2. *Section* 47 (1).
3. *Section* 52.
4. *Section* 53.

person so permitted would pay consideration for such use or occupation.[1]

First charge.

(1) Renewal fees and arrears of michavaram or rent together with interest, if any, payable thereon are a first charge on the holding of the person from which they are due; and such charge has priority over all other charges, except the charge for the revenue and any dues thereon payable to government or to a local authority and made a charge thereon by any law for the time being in force.[2]

Valuation of rent in kind.

(2) When any rent, michavaram or renewal fee is paid or is to be paid in money, in whole or in part, paddy, coconuts, arecanuts and pepper, have to be valued, for the purpose of determining the sum due, at the average market price of the previous five years,[3] and for this purpose, the collector of the district will in the month of April every year publish in the *Malabar District Gazette* the average market price of paddy, cocoanut, arecanut and pepper, at each taluq head-quarters, for the twelve complete months preceding the date of the publication.[4]

Place of payment.

(3) Where rent is payable in kind, it has, in the absence of a contract to the contrary, to be delivered in the landlord's granary in the village in which the holding is situated; or at such other granary within three miles of the village as may be provided in that behalf by the landlord.[5]

Fair rent.
Dry land.
Garden land.

'Fair rent' is rent as determined in accordance with the provisions of the Act.[6] 'Dry land' means a land which is neither a 'wet land' nor a 'garden land.'[7] 'Garden land' means any land

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1. *Section* 3 (*u*).
2. *Section* 41.
3. *Section* 51 (2).
4. *Section* 51 (1).
5. *Section* 52.
6. *Section* 3 (*f*).
7. *Section* 3 (*d*).
8. *Section* 3 (*g*).

used principally for growing fruit bearing trees.[6] 'Wet land' means land which is adapted for the cultivation of paddy.[1] 'Gross produce' in respect of wet lands means the produce obtained after paying the expenses of reaping,[2] and 'seed required' means the quantity of seed customarily deemed to be required.[3]

Wet land.

Gross produce.

Seed required.

Fair rent of dry lands converted into wet.

Fair rent in the case of dry lands converted into wet by the tenant's labour will be—

(*a*) for a period of twenty years from the year in which the first wet crop is raised on the land, one-fifth of the difference between the annual gross paddy produce of the land and three times the seed required for the said land for an agricultural year ; and

(*b*) after the expiration of the twenty years, one-fifth of the difference between the annual gross paddy produce of the land and two-and-half times the seed required for the said land for an agricultural year.[4]

Of other wet lands.

In the case of other wet lands, the fair rent will be two-thirds of the difference between one-third of the gross paddy produce of the land for the three years immediately previous to the date on which the fair rent is to be ascertained and two-and-half times the seed required for the said land for an agricultural year.[5]

Of garden lands.

In the case of garden lands fair rent will be a share, ascertained under sub-sections (2), (3) and (4), of one-third of the gross produce for the three years immediately previous to the date on which the fair rent is to be ascertained.[6]

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1. *Section* 3 (*x*).
2. *Section* 4 (*b*).
3. *Section* 4 (*a*).
4. *Section* 5.
5. *Section* 6.
6. *Section* 7.

Of dry lands.

Fair rent in the case of dry lands will be three times the assessment payable in respect thereof per annum.[1]

Of lands within municipal limits.

In the case of lands situated within the limits of any municipality and not built or planted upon, or on which no crop is grown, the fair rent will be the rent paid or agreed to be paid in respect of similar lands of the same extent, in the neighbourhood. In the case of other lands situated within the said limits, the fair rent will be determined in accordance with the provisions of sections 5 to 8 or the fair rent determined as above, whichever is higher.[2]

Tenant.

'Tenant' means any person who has paid or has agreed to pay rent, or other consideration, for his being allowed by another, to enjoy the land of the latter, and includes an intermediary, a kanamdar, a kuzhikanamdar, and a verumpattamdar of any description.[3]

(1) All rights which the tenant has in his holding are heritable and alienable.[4]

(2) Any tenant whose holding has been granted on melcharth can when sued for eviction avail himself of the provisions of Chapters III (regarding cultivating verumpattamdar) and IV (regarding renewal).[5]

(3) He has a right to get a receipt from his landlord for the rent he pays to him containing the particulars regarding the date of payment, the amount paid, the arrears, if any, etc.[6] In the absence of such particulars, the burden of proving arrears of rent or michavaram that has accrued due prior to the date of receipt is on the person claiming such arrears.[7] If the landlord fails to grant a receipt, the tenant can send by money order, after deducting the charges for doing so,

1. *Section* 8.
2. *Section* 9.
3. *Section* 2 (*v*).
4. *Section* 39.
5. *Section* 40 (1).
6. *Section* 47 (1).
7. *Section* 47 (2).

(a) the money, if the rent or michavaram is payable in money, and

(b) the money value of the rent or michavaram, if it is payable in kind.[1]

Renewal fee.

'Renewal fee' means fee or fees payable by a tenant to his landlord for the renewal of the legal relationship under which the tenant has been holding any land.[2]

Renewal can be claimed on payment of a renewal fee by

Renewal.

(1) a customary verumpattamdar,

(2) a kanamdar,

(3) a kuzhikanamdar.

Notwithstanding any contract to the contrary, whether made before or after the commencement of the Act, a customary verumpattamdar, a kanamdar, or a kuzhikanamdar is entitled to apply to the court for the execution of a renewal deed.[3]

Verumpattamdar.

Verumpattamdar is a tenant other than a kanamdar or kuzhikanamdar of a holding, for agricultural purposes, which includes wet lands, and may or may not include other lands.[4] He is divided into two classes—

(1) Cultivating verumpattamdar and (2) customary verumpattamdar.

Cultivating verumpattamdar.

Cultivating verumpattamdar is one who, not being a janmi, intermediary or customary verumpattamdar has, expressly or impliedly, contracted to cultivate the lands in a holding, either as a tenant-at-will or during a fixed term, and actually cultivates the same.[5]

1. *Section* 47 (3).
2. *Section* 3 (*t*).
3. *Section* 22 (1).
4. *Section* 3 *w* (1)
5. *Section* 3 *w* (2).

His rights are :—

(1) Notwithstanding any contract to the contrary entered into before or after passing of the Act, he has a fixity of tenure in respect of his holding and cannot be evicted, except as provided in the Act.[1]

Fixity of tenure.

(2) He or his immediate landlord may apply to the court to fix the extent of the holding, the fair rent in respect of it, the instalments, if any, in which it is payable and the date or dates when the fair rent or its instalments are payable.[2]

Fixing extent of holding.

(3) At any time after the expiry of twenty years from the date of an order fixing a fair rent or from the date of the last confirmation or revision of such order he or his immediate landlord can apply for revision of the fair rent.[3]

Revision of rent.

(4) Notwithstanding any contract to the contrary entered into before or after the passing of the Act, he is not liable to pay anything more or anything else than the fair rent.[4]

Non-liability to pay anything more than fair rent.

(5) He can surrender the holding to his immediate landlord at the end of any agricultural year by a registered instrument; and the landlord is not bound to accept such surrender unless notice of the intention to surrender has been given to him three months prior to the expiry of the agricultural year, and the surrender is in respect of the entire holding and the whole of the arrears of the michavaram or rent is also tendered at the time of the surrender. The landlord when accepting the surrender is not bound to refund the kanartham or to pay the value of the improvements which he would otherwise have to pay under the Improvement Act.[5]

Surrender of holding.

1. *Section* 10.
2. *Section* 11.
3. *Section* 30 (1).
4. *Section* 32.
5. *Section* 44.

Eviction.

(6) He can be evicted only on any of the following grounds; eviction meaning the recovery of possession of land from a tenant and including the redemption of a kanam[1]:—

Denial of title.

(i) Wilful denial of the landlord's title before the date of suit; but such denial is not wilful, if made under a *bona fide* mistake of fact.[2]

Waste.

(ii) Intentional and wilful acts of waste calculated to impair materially and permanently the value or utility of the holding for agricultural purposes.[3]

Non-payment of rent.

(iii) Non-payment of the whole or any portion of the rent due on the holding within 3 months after the due date.[4]

Relief against.

Relief is given to the tenant if, in the suit for eviction, he deposits into court,

(*a*) rent with interest thereon at the contract rate;

(*b*) interest on the principal amount of rent due at 12 per cent. per annum from the date of suit up to the date of deposit;

(*c*) costs of the suit up to the date of deposit.[5]

Acting adversely to the interest of the landlord.

(iv) Collusively allowing a stranger to encroach upon the holding or part thereof adversely to the interests of the landlord,[6] provided that, where only a portion of the holding is encroached upon, ejectment is only from that portion.[7]

1. *Section* 3 (*e*).
2. *Section* 14 (1).
3. *Section* 14 (2).
4. *Section* 14 (3).
5. *Section* 15 (3).
6. *Section* 14 (4).
7. *Section* 14, *proviso*.

Landlord requiring the land for own cultivation.

(v) The landlord requiring at the end of an agricultural year the holding *bona fide* for his own cultivation or that of any member of his family or tarwad or tavazhi who has a proprietary and beneficial interest therein[1]; and this right does not enure to the benefit of the holder of a melcharth.[2]

Transfer to another within six years.

But if within six years after such eviction the landlord transfers any of the lands to any other person on any kind of lease or mortgage with possession, or on kanam, kuzhikanam or verumpattam, the tenant can sue for restoration of possession of all the lands to him with all the rights and liabilities of a cultivating verumpattamdar.[3]

Limitation.

Limitation for such a suit is one year from the date of the transfer by the landlord.[4]

Landlord requiring land for building purposes.

(vi) The landlord requiring at the end of an agricultural year the holding or part thereof *bona fide* for building purposes for himself or any member of his family or tarwad or tavazhi who has a proprietary, and beneficial interest therein,[5] provided that, where only a portion of the holding is required, ejectment is only from such portion.[6] This right does not survive to the holder of a melcharth.[7]

Non-building or transfer to another within six years.

But if the landlord does not erect the building within six years after such eviction, or if within six years of such eviction, he transfers the land to any person on any lease, mortgage with possession or on kanam, kuzhikanam or verumpattam, the tenant can sue for restoration of possession of the lands to him with all the rights and liabilities of a cultivating verumpattamdar.[8]

1. *Section* 14 (5).
2. *Section* 40 (2).
3. *Section* 15 (1).
4. *Section* 43 (1).
5. *Section* 14 (6).
6. *Section* 14, *proviso*.
7. *Section* 40 (2)
8. *Section* 15 (2)

Limitation.

Limitation for such a suit is one year from the expiry of six years after such eviction.[1]

Non-compliance of the order of court under section 13 (3).

(vii) Non-compliance of the order of court under section 13 (3).[2]

Relief is given to the tenant if he (*a*) deposits in court for payment to the plaintiff one year's fair rent of the holding in advance or furnishes security for the same or deposits in court for such payment a portion of such fair rent and furnishes such security for the remainder, or (*b*) where he has already paid a portion of the said fair rent or furnished security for a portion thereof, deposits in court for payment to the plaintiff the balance of the said fair rent or furnishes security for such balance or deposits in court for such payment a portion of such balance and furnishes security for the remainder and (ii) deposits in court for payment to the plaintiff the costs of the latter up to the date of deposit.[3]

The liabilities of a cultivating verumpattamdar are :—

Liability to pay advance.

(1) He can at any time by a notice in writing be called upon by his landlord at the former's option,

(*a*) to pay one year's fair rent of the holding in advance, or

(*b*) to furnish security for the said fair rent, or

(*c*) to pay a portion of the said fair rent in advance and furnish security for the balance.[4]

(2) He must pay to his immediate landlord the fair rent fixed under section 12.[5]

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1. *Section* 43 (1).
2. *Section* 14 (7).
3. *Section* 15 (4).
4. *Section* 13 (1).
5. *Section* 28.

(3) As between him and any landlord, he is liable for—

Liability to pay government revenue, etc.

(a) the revenue payable to government as also the local cesses, on any land on which no rent is payable under the Act and (b) any special charges leviable by government for special or additional crops raised on the wet lands.[1]

Municipal tax.

(b) In cases of lands within a municipality in respect of which the landlord has obtained fair rent as ascertained under section 9, he has to pay a municipal tax for such land to the extent such rent is higher than what he is liable therefor; but otherwise the landlord and tenant have to pay the tax in equal shares.[2]

Customary verumpattamdar.

Customary verumpattamdar is a verumpattamdar who is entitled by custom of the locality in which the land is situate to possession of the said land for a definite period of years and for whose continuance thereon after the termination of that period, for a further period, a renewal fee has to be paid to the landlord as an incident of the tenure.[3]

His rights are:—

Renewal.

(1) He is entitled on the expiry of the verumpattam lease under which he holds, to claim and his immediate landlord bound to grant a renewal, enuring for a period of twelve years, of the same, on payment to him, as renewal fee, of three times the balance of the annual fair rent of the lands covered by the verumpattam lease after deducting both the annual rent payable under the previous lease and the annual government revenue in cases where the revenue is payable by him.[4]

Execution of renewal bond.

(2) He is entitled to apply to the court for the execution of a renewal deed, notwithstanding any contract to the contrary, whether made before or after the commencement of the Act.[5]

1. *Section* 29. 2. *Section* 29 (2). 3. *Section* 2 (*w*) (3).
4. *Section* 16. 5. *Section* 22.

(3) He is not liable to pay for the purpose of obtaining a renewal anything more than the renewal fee fixed by the Act.[1]

Not to pay more than renewal fee.

(4) He can after obtaining a renewal, surrender his holding to his immediate landlord by a registered document.[2] The same conditions under which the landlord of a cultivating verumpattamdar is bound to accept the surrender or refund the kanartham apply here also.

Surrender.

(5) If a cultivating customary verumpattamdar who has given up his rights as such, desires to continue on the holding as a cultivating verumpattamdar, the provisions of the Act will apply to him as if he were a cultivating verumpattamdar.[3]

Right to continue.

(6) He can be evicted on any of the following grounds:—

Eviction.

(*i*) Wilful denial of the landlord's title before the date of suit; but such denial is not wilful, if made under a *bona fide* mistake of fact.[4]

Denial of title.

(*ii*) Intentional and wilful acts of waste calculated to impair materially and permanently the value or utility of the holding for agricultural purposes.

Waste.

(*iii*) Expiry of the verumpattam and no renewal has been obtained.[6]

Expiry.

(*iv*) Collusively allowing a stranger to encroach upon the holding or part thereof adversely to the interests of the landlord,[7] provided that, where only a portion of the holding is encroached upon, eviction is only from such portion.[8]

Acting adversely to interests of landlord.

1. *Section* 32.
2. *Section* 44.
3. *Section* 45.
4. *Section* 20 (1).
5. *Section* 20 (2).
6. *Section* 20 (3).
7. *Section* 20 (4).
8. *Section* 20, *proviso*.

Landlord requiring land for own cultivation.

(*v*) That the period of the verumpattam has expired and there has been no renewal and the landlord requires the holding *bona fide* for his own cultivation or for a member of his family, tarwad or tavazhi who has a proprietary and beneficial interest therein.[1] This right does not enure to the benefit of the holder of a melcharth.[2]

Transfer to another within six years.

But, if within six years of such eviction the landlord transfers any of the lands to any person on any kind of lease or mortgage with possession, or on kanam, kuzhikanam or verumpattam, the tenant can sue for restoration of possession of all the lands held by him from which he was evicted and to hold them with all the rights and liabilities of a tenant.[3]

Limitation.

Limitation for such a suit is one year from the date of transfer by the landlord.[4]

Landlord requiring land for own cultivation.

(*vi*) That the period of verumpattam has expired and there has been no renewal and the landlord requires the holding or part thereof *bona fide* for building purposes for himself or any member of his family, tarwad or tavazhi who has a proprietary and beneficial interest therein,[5] provided that, where only a portion of the holding is required, eviction is only from such portion.[6]

Non-building or transfer of land within six years.

But if within six years of such eviction, the landlord transfers any of the lands on any kind of lease or mortgage with possession, or kanam, kuzhikanam or verumpattam, or if within six years of such eviction the landlord does not erect any building, the tenant can sue for the restoration

1. *Section* 20 (5).
2. *Section* 40 (2).
3. *Section* 21 (1).
4. *Section* 43 (1)
5. *Section* 20 (6)
6. *Section* 20, *proviso*

of possession of all the lands held by him from which he was evicted with all the rights and liabilities of a tenant.[1]

Limitation.

Limitation for such a suit is one year from the expiry of six years after the eviction.[2]

Kanam.

Kanam means the transfer for consideration in money or in kind or in both by a landlord of an interest in specific immoveable property to another (called the kanamdar) for the latter's enjoyment, the incidents of which transfer include—

(1) a right in the transferee to hold the said property liable for the consideration paid by him or due to him which consideration is called 'kanartham,'

(2) the liability of the transferor to pay to the transferee interest on the kanartham,

(3) the payment of 'michavaram' by the transferee,

(4) the right of the transfere to enjoy the said property for twelve years or any other period, and

(5) the liability of the transferee to pay a renewal fee to the transferor, if the transferee is permitted to enjoy the said property for a further period after the termination of the original period.[3]

Melcharth.

Melcharth means the transfer by the landlord of part of his interest in any land held by his tenant by which the transferee is entitled to evict such tenant.[4]

Michavaram.

Michavaram means whatever is agreed by a kanamdar in a kanam deed to be paid periodically, in money or in kind or in both, to or on behalf of the janmi.[5]

Kanamdar's rights.

The rights of a kanamdar are :—

1. *Section* 21 (2).
2. *Section* 43 (*b*).
3. *Section* 3 (*l*).
4. *Section* 3 (*p*).
5. *Section* 3 (*q*).

Renewal.

(1) He is entitled on the expiry of the kanam under which he holds to claim and his immediate landlord bound to grant a renewal, enuring for a period of twelve years, of the same on payment, as renewal fee, of two and one-fourth times the balance of the annual fair rent of the lands covered by the kanam after deducting (*a*) the annual revenue payable on the kanam property to government, if payable by the kanamdar under the kanam deed, (*b*) the annual interest on the kanartham, and (*c*) the annual michavaram payable under the previous kanam.

Rate of interest.

Where neither the rate of interest nor the amount of interest nor the sum total of the annual revenue payable on the kanam property to government by the kanamdar and the amount of interest per annum, is specified, interest shall be calculated in North Malabar at five per cent. and in other places at twelve per cent. per annum when the kanartham does not exceed Rs. 1,000; at nine per cent. subject to a minimum of Rs. 120 when it is between one thousand and three thousand rupees; at six per cent. subject to a minimum of two hundred and seventy rupees if it exceeds three thousand rupees.

Execution of renewal deed.

(2) Notwithstanding any contract to the contrary (whether executed before or after the passing of this Act), he is entitled to apply to the court for the execution of a renewal deed.[1]

Not liable to pay more.

(3) He is not liable to pay for obtaining a renewal anything more than the renewal fee fixed by the Act.[2]

Surrender.

(4) He can after deducting a renewal surrender his holding to his immediate landlord in the circumstances of those of a customary verumpattamdar,[3] as to which *vide ante* p. 261.

1. *Section* 22 (1).

2. *Section* 32.

3. *Section* 44.

Continuance after redemption.

(5) If the cultivating kanamdar who consents to be redeemed, desires to continue on the land as a cultivating verumpattamdar, the provisions of the Act will apply to him as if he were a cultivating verumpattamdar.[1]

Eviction.

(6) He can be evicted in the same circumstances as those of a customary verumpattamdar,[2] as to which *vide ante* pp. 261—263.

Kuzhikanam.

Kuzhikanam is a transfer by a landlord to another (called the kuzhikanamdar) of garden lands or of other lands or of both, with the fruit bearing trees, if any, standing thereon at the time of the transfer, for the enjoyment of those trees and for the purpose of planting such fruit bearing trees thereon, the incidents of which transfer include (1) the right of the transferee to enjoy the lands for twelve years or for any other period, and (2) the liability of the transferee to pay a renewal fee to the transferor, if the transferee is permitted to enjoy the said lands for a further period after the termination of the original period.[3]

The rights of a kuzhikanamdar are :—

Renewal.

(1) He is entitled on the expiry of the kuzhikanam under which he holds to claim and his immediate landlord bound to grant a renewal, enuring for a period of twelve years, of the same, on payment to him, as renewal fee, of the total of one-fourth of the annual gross produce of the fruit bearing trees and pepper vines where pepper is not the principal crop in the holding, belonging to the cultivating kuzhikanamdar and one half of the annual gross produce of the other fruit bearing trees and pepper vines where pepper is not the principal crop in the holding.[4] Any intermediary of the kuzhikanam also is

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1. *Section* 45.
2. *Section* 20.
3. *Section* 3 (*n*).
4. *Section* 18 (1).

entitled to claim on the expiry of the kuzhikanam and his immediate landlord bound to grant a renewal, enuring for twelve years. The payment to be made by him as renewal fee is the same as that of a kuzhikanamdar.

Application to court for renewal.

(2) Notwithstanding any contract to the contrary (whether made before or after the passing of the Act) he is entitled to apply to the court for the execution of a renewal deed.[1]

(3) He is not liable for the purposes of obtaining a renewal to pay anything more than the renewal fee fixed by the Act.[2]

Surrender.

(4) A kuzhikanamdar who has obtained a renewal may at the end of any agricultural year surrender his holding to his immediate landlord by a registered instrument in the same circumstances of those of a customary verumpattamdar[3] as to which *vide ante* p. 261.

Eviction.

(5) He can be evicted in the same circumstances as those of a customary verumpattamdar,[4] as to which *vide* pp. 261—263.

Kudiyiruppu.

Kudiyiruppu means and includes the site of any residential building, the site or sites of other buildings appurtenant thereto, such other lands as are necessary for the convenient enjoyment of such residential building, and the easements attached thereto.[5]

Separate kudiyiruppu.

Separate kudiyiruppu means a kudiyiruppu which is the sole property comprised in a holding.[6]

Separable kudiyiruppu.

Separable kudiyiruppu means a kudiyiruppu which is included with other property in a holding and which is not necessary for the convenient enjoyment, as usual, of any other part of the holding.[7]

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1. *Section* 22 (1).
2. *Section* 32.
3. *Section* 44.
4. *Section* 20.
5. *Section* 3 (*m*) (1).
6. *Section* 3 (*m*) (2).
7. *Section* 3 (*m*) (3).

In suit for eviction.

In any suit for eviction relating wholly or in part to a kudiyiruppu, which has been in the continuous occupation of a tenant or the members of his family for ten years, such tenant has a right to offer and purchase the landlord's right in the kudiyiruppu at the market price. If the landlord accepts unconditionally the offer, the court will order the tenant to deposit in court the price specified by him together with the arrears, if any, of rent, michavaram, the revenue payable by the tenant and the local cesses payable by him in respect of the kudiyiruppu; the suit in so far as it relates to the eviction from the kudiyiruppu will be dismissed. If the landlord does not unconditionaliy accept the offer, the court will decide whether the kudiyiruppu is a separate or separable one. If the decision is that it is so, it will determine the market price of the landlord's rights as it stood on the date fixed for acceptance of the offer by the landlord and call upon the tenant to deposit it together with the arrears of rent etc., on or before a certain date and if the court thinks that the tenant is too poor to pay the entire deposit in one lump sum, it may direct its payment in annual instalments not exceeding twelve and require security for payment of such instalments. On such deposit being made or security given the suit for eviction so far as the kudiyiruppu is concerned will be dismissed. Such order or decree shall operate as a sale to the tenant of the landlord's rights in the kudiyiruppu subject to the condition that in the event of any subsequent sale of the kudiyiruppu by the tenant, his heirs, executors, representatives in interest or assigns or in execution of a decree against them, or by a receiver in insolvency, the person who would be entitled to the landlord's rights in the said property at the time of such subsequent sale, will be entitled to claim preemption.

CUSTOMARY LAW.

Perpetual leases.

Perpetual leases :—The generic name for perpetual leases is *saswatam*. They owe their origin, probably to the unwillingness of *janmis* to part with the full proprietary title and were granted with or without reservation of rent either in consideration of a present money payment, or in recognition of services rendered, or as rewards for services to be rendered. The grant, if made to a Brahman, is termed *brahmasvam* ; if made to a non-Brahman, of caste equal to or higher than the grantor, it is called *anubhavam* or *saswitam* ; and if some nominal rent or right to renewal fee is reserved, *karamkari* or *jenmamkoru* ; and if made to a person of inferior caste, *adima* or *kudima*. Grants of temple land on service tenure are termed *karaima*.

Santhathi brahmasvam.

Grant to Brahmans are made in the form of *santhathi brahmasvam*. As its name implies, it is a grant to the grantee and his heirs, and usually no rent or services are reserved. In the case of lands held on *santhathi brahmasvam*, the landlord has no right of re-entry on alienation by the tenant.[1]

Anubhavam.

Anubhavam literally means enjoyment, and in Malabar conveyances invariably means perpetual enjoyment and hence a perpetual lease and is irredeemble as long as it remains in the grantee's family and resembles an *inam* on the east coast.[2] The term may be used with reference to a tenure of land or to a specified money or grain-rent charged on the land. In the former case it will *prima facie* import an irredeemable tenure; and in the latter case the allowance will be perpetual, but not the tenure.[3] But if the amount of the grant is not specified and the terms of the document indicated that only a fixed rent is reserved to the grantor and the rest of the produce given as *anubhavam*, an irredeemable tenure is created. It is

1. *Ayyakutti* v *Krishna Pattar*, 45 Mad. 394.
2. *Theyyan Nair* v. *Zamorin of Calicut*, 17 Mad. 202.
3. *Vaithilingam Pillai* v. *Kuthiravatta Nair*, 29 Mad. 501.

described by the *Sudder Court* thus: "It is a grant of land made by princes for the maintenance of the position of the grantee. It was customary for princes, when conferring title on any person to grant him at the same time sufficient land to enable him to maintain the dignity of his position. Grants under this tenure were also bestowed upon persons for special services rendered or for the future performance of certain services. The tenant cannot be ejected except where there are conditions imposed and he fails to fulfil them; but on the other hand he and his heirs have only the right of enjoyment and cannot alienate their title. A trifling annual fee is generally paid to the landlord to show that he has the proprietary right."

Karamkuri.

Karamkuri :—The nature of this tenure is described by the *Sudder Court* thus: "In this case the land is made over for permanent cultivation by the tenant in return for services rendered. Where the proprietary title is vested in a pagoda, the grant will be made for future services. In some cases land is mortgaged on this tenure, the kanam mortgagee paying the surplus rent produce to the landlord, after deducting the interest on the money he has advanced. The tenant has, in North Malabar, only a life interest in the property which at his death reverts to the landlord. In the South the land is enjoyed by the tenant and his descendants, until there is a failure of heirs, when it reverts to the proprietor. Except when the land is granted for special services, an annual rent is payable under this tenure. The tenant's right is confined to that of cultivation, but it is permanent and he cannot be ousted for arrears of rent, which must be recovered by action, unless there be a specific clause in the deed declaring the lease cancelled, if the rent be allowed to fall into arrears." Lands held on this tenure are not liable to forfeiture on alienation by the tenant.[1]

1. *Zamorin Raj* v *Samu Nair*, 38 M.L.J. 275; *Ayyakutti* v. *Krishna Pattar*, 45 Mad. 394; *Krishnan Nambudripad* v. *Kunkan Nair*, 86 I.C, 294; the decision in *Achutan Menon* v. *Sankaran Nair*, 36 Mad. 380 must be deemed to have been overruled by later decisions; *Krishnan Nambudripad* v. *Kunkan Nair*, 86 I C. 294.

Adima or *kudima* is described by the *Sudder Court* thus : "In this the land is made over in perpetuity to the grantee, either unconditionally or as a mark of favour or on condition of certain services being performed. The terms *adima* and *kudima* mean a slave or one subject to the landlord, the grant being made generally to such persons. A nominal fee of two fanams a year is payable to the landlord to show that he retains the proprietary title. Land bestowed as a mark of favour can never be resumed ; but where it is granted as remuneration for certain services to be performed, the non-performance of such services, involving the necessity of having them discharged by others, will give the landlord power to recover the land. The non-payment of the annual rent will form no ground for ousting the grantee, but it will be recoverable by action. The hereditary property of native princes cannot be conferred on this tenure, the ruling princes having only the right of enjoyment during life without power to alienate."

Adima or Kudima.

Adima or *kudima* and *anubhavam* tenures are the same, the nomenclature differing with the caste of the grantee. A *kudima* tenure when granted for future services are forfeited for refusal to perform them, and a denial of the landlord's title is tantamount to a refusal to perform services[1]. *Adimayavana* means an allowance given for service and imports *prima facie* a permanent tenure when granted as a reward for past services or both for past and future services.[2] It is irredeemable as long as it remains in the grantee's family when it was granted for former services.[3] The landlord's right to eject the tenant in *kudima jenmam* demises is limited to cases where

Adimayavana.

1. *Raman Nair*, v. *Mariyomma*, 11 L.W. 513.

2. *Theyyan Nair* v. *Zamorin of Calicut*, 27 Mad. 202; *Vythilingam Pillai* v. *Kuthiravatta Nair*, 29 Mad. 501; *Mana Vikrama* v. *Gopalan Nair*, 30 Mad. 203; *Konhan* v. *Raman*, 43 I C. 379; *Vasudevan Nambudripad* v. *Kannan Nair*, A.I.R. (1928) Mad. 1084.

3. *Theyyan Nair* v. *Zamorin of Calicut*, 27 Mad. 202.

the latter omits to perform the services for which they were made, and an assertion of a *jenm* right by him does not work a forfeiture so as to enable the landlord to eject him.[1]

Karaima.

Karaima grants are grants of temple lands on service tenure. They are inseparable from service, and on failure of heirs in the grantee's family are resumable by the grantor. They cannot be capriciously determined as long as the grantee is ready and willing to perform the service. But if a *karaima* tenant neglects to perform the services imposed on the tenure and renders the employment of another necessary to perform them, or if he endeavours to set up a proprietary claim in subversion of that of the pagoda, the urallers have a right to maintain an action for ejectment.[2] The lands held on this tenure cannot be sold.

Ari jenm.

Ari jenm is of modern origin and is a kind of perpetual lease of temple lands. The lessee is bound to take a fixed quantity of rice to the temple to be offered to the deity daily and after the usual offerings, he is allowed to take back the cooked rice for his own use.[3]

Panayam.

We now come to mortgages. *Panayam* means a simple mortgage with or without possession. In this form of mortgage there is no implied covenant for quiet enjoyment for twelve years, but its terms may be similar to those of a *kanam*.[4]

Choondi panayam.

Choondi panayam is a simple mortgage without possession.

Thodu panayam.

Thodu panayam is a simple mortgage in which the mortgagor agrees to place the mortgagee in possession of the property mortgaged in case of default of payment of interest according to the stipulation in the deed.

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1 *Tunkunni Achan* v. *Manchu Nair*, 2 L.W. 102.
2, *Pro. Sud. Court Kanni* v. *Achuda*, 3 M.H.C.R. 380.
3 *Minute*, 40.
4. *Moore*, 194; see also *Ryrappan Nambiar* v. *Raman Nambiar*, 31 M.L.J. 679.

Coodirumpad.

Coodirumpad or *nilamuri* is a simple mortgage without possession, but the landlord and the creditor enter into an arrangement by which the latter agrees to receive the rent produce of the land leased to a tenant in lieu of interest on the money due on the loan. Should any dispute arise between the landlord and the tenant whereby rent is not paid to the creditor, he can sue the mortgagor.

Undaruthi panayam

Undaruthi panayam is a mortgage which extinguishes itself within a time fixed by the parties. Both the principal and interest will be extinguished by the usufruct, and the land will revert to the mortgagor free of encumbrances.

Koyu or kari panayam.

Koyu (ploughshare) *panayam*, or *kari* (plough) *panayam* is a usufructuary mortgage by which the mortgagee retains possession of the mortgaged property and either enjoys its usufruct in lieu of interest or apportions a portion thereof to the interest and accounts for the remainder to the mortgagor.

Otti.

Otti is defined as "a usufructuary mortgage the usufruct of which extinguishes the interest, leaving only a nominal rent to be paid to the mortgagor."[1] It is called *veppu*, *palishamadaku* or *nerpalisha*. *Veppu* is in use in Palghat; and *palishamadaku* in Nedunganad and Walluvanad.[2] When an *otti* is granted, very often little or nothing is left to the *jenmi* except the right to redeem.[3] An *otti* like a *kanam* cannot be redeemed before the expiry of twelve years,[4] and the *ottidar* also forfeits his right to hold for twelve years by denying the *janmi's* title, but does not forfeit it by endeavouring to set up further charges which he fails to prove, or by denying that

1. *Moore*, 250.
2. *Pro. Sud. Court.*
3. *Edathil Itti* v. *Kopashon Nayar*, 1 M.H C.R. 122.
4. *Edathil Itti* v. *Kopashon Nair*, 1 M.H.C.R. 122; *Kumini Amma* v. *Parkam Kolusheri*, 1 M.H.C.R 261.

an assignment of the jenm title is invalid because it is made without his consent and in defeasance of his right of redemption without any previous offer to him. An *otti* differs from a *kanam* in that (1) the *ottidar* has got a right of pre-emption in case the *janmi* wishes to sell the land, (2) the prior right which the *ottidar* has of making any further advances; and the amount secured is generally so large that the interest payable absorbs the whole rent and the *janmi* is entitled only to a pepper-corn rent. But the right of pre-emption does not arise in the case of involuntary sales unless the statute under which they take place provides for it.[1]

Pre-emption how lost.

But the *ottidar* may lose his right by his failure to exercise it in proper time.

Ottikumpuram.

If the *janmi* wants more money and takes a further loan from the *ottidar*, he executes an *ottikumpuram* deed. The *janmi* is bound to pay this amount at the same time he pays the *otti* amount. The *janmi* still retains domination over the property and can apply for more money to the *ottidar*, and if he refuses, can apply to a third party and pay him off. The *janmi* may, however, be desirous of borrowing still further on the property after executing an *ottikumpuram*. He is then bound to apply to the *ottidar*, and if he consents to make the required advance, the former executes a *nirmudal* deed by which he makes over all interests in the land to the mortgagee, except the right of water. Such further advance is recoverable with the amount of the original mortgage, the *ottidar* being in fact the owner. A still further sum on the mortgage of the property is obtained by the execution of *janmam panayam*, the last recourse short of selling land altogether. In executing this deed, the landlord relinquishes the power to redeem his land and has nothing left in him but the nominal right of proprietorship. By going through the form of casting a few

Nirmudal.

Janman panayam.

1. *Vasudevan* v. *Ittirarichan Nair*, 41 Mad. 582.

drops of water from his hand, he yields up all right of further interference with the land. He cannot sell his proprietary title to any one except the mortgagee, as he has already made over to him all the rights and privileges possessed by a proprietor. Last of all he raises money by executing *attiper, atti petola*, or *jenmadaron* which is the last *karanam* or deed executed on this occasion and without it no sale of property can be valid. The *janmi* reserves no *porappad* or anything to himself. He cannot, after the execution of this deed, redeem the mortgage and the relinquishment of proprietary right is complete under it. This deed generally mentions that the full value of the property disposed of has been received and states its boundaries, but does not specify the amount received. In former days the various transactions from *otti* onwards had to be gone through; otherwise no sale was complete. But now the *janmi* can sell his property at once without creating an *otti* at all.

Attiper.

Peruartham approximates closely to *otti*, the mortgagee being in possession and enjoying the whole produce. "The peculiarity of this tenure is that the sum advanced which is always the marketable value of the land for the time being is not mentioned in the deed, and the landlord in redeeming his prior property does not repay the amount originally advanced, but the actual value of it in market at the time of the redemption.[1] "

Peruartham.

Kividuka otti or keivida otti is a mortgage by which "the landlord relinquishes the power of transferring the property to a third party, and binds himself to borrow any further sum he may require only from the mortgagee. Should the latter decline to advance the amount, the landlord may pay off the mortgage and assign the property to another[2]". It is redeemable.[3]

Kividuka otti.

1. *Pro. Sud. Court*; *Shekari Varma* v. *Mangalam Amagar*, 1 Mad. 57.
2. *Pro. Sud. Court.*
3. *Kundu* v. *Impichi*, 7 Mad. 442.

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